

In the High Court of Punjab and Haryana at Chandigarh

.....

C.M. No.1777-C of 2013

and

R.S.A. No.635 of 2013

.....

Date of decision:23.3.2015

Balbir Singh

.....Appellant

v.

Tarun Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Sandeep Arora, Advocate for the appellant.

.....

Inderjit Singh, J.

C.M. No.1777-C of 2013:

For the averments made in the civil miscellaneous application, exemption from filing certified copy of judgment and decree dated 4.10.2010 passed by the learned trial Court is granted subject to just all exceptions.

The civil miscellaneous application stands disposed of.

R.S.A. No.635 of 2013:

This regular second appeal has been filed by the appellant-defendant No.1 aggrieved against the impugned judgment and decree dated 21.11.2012 passed by the learned Additional District Judge, Gurdaspur,

affirming the impugned judgment and decree dated 4.10.2010 passed by the learned Civil Judge (Senior Division), Gurdaspur, whereby the civil suit filed by plaintiff-respondent No.1 and counter-claim filed by the defendants have been dismissed.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that Tarun Singh-plaintiff had filed the civil suit against Balbir Singh, Jagdish Singh, Kamaljit Singh and Tirath Singh for permanent injunction restraining the defendants from interfering in his cultivating possession of the suit land as a tenant. In the civil suit, a counter-claim was filed by Balbir Singh, Jagdish Singh, Kamaljit Singh and Tirath Singh-defendants/claimants against Tarun Singh for mandatory injunction directing him to remove his illegal encroachment from land measuring 0-9 Marlas fully described in the head note of the plaint, which is meant for passage for use of defendants for ingress and egress to their land comprised in Killa No.23/1, 24/1 and 25 of rectangle No.24 and to Killa No.5/2, 6 of rectangle No.31 as shown in 'Shajra Aks'.

The learned Civil Judge (Senior Division), Gurdaspur vide judgment dated 4.10.2010 dismissed the suit as well as the counter-claim with costs. The appeal was filed by the present appellant-defendant No.1 and other defendants, which was also dismissed by the learned Additional District Judge, Gurdaspur vide judgment and decree dated 21.11.2012.

Aggrieved against the impugned judgments and decrees passed by the Courts below, Balbir Singh-defendant No.1 (appellant herein) has

filed this regular second appeal.

As per the facts of the case, the plaintiff filed the suit for permanent injunction alleging that he had been coming into cultivating possession of the land measuring 18 Marlas described in the plaint as a tenant of the Government/owner of the suit land and he is paying rent to the Government and planted Safeda trees etc. and the defendants have got no right, title or interest in the suit land.

On the other hand, the defendants' case is that land comprised in Killa No.23/1, 24/1, 25 of rectangle No.34, Killa No.6, 5/2 was owned by the Central Government, but it was allotted to different persons many years ago. Defendant No.1 Balbir Singh along with his brothers had purchased the land from its original owner. The area in the suit had been left as a passage for ingress and egress to the property of the defendants, which was allotted by the Central Government. The plaintiff two-three years ago, had encroached upon the area of passage comprised in Killa No.23/2 and had illegally planted some trees with a view to encroach upon the said area.

From the arguments of the learned counsel for the appellant, firstly, I find that no substantial question of law arises in this regular second appeal. Secondly, there are concurrent findings of fact given by both the Courts below. The learned Courts below have appreciated the evidence in right perspective and, in no way, it can be held that the evidence produced by the parties have been misread in this case. Admittedly, the property in dispute is owned by Central Government, which is stated to have been encroached upon by the present respondents. Learned Courts below have

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found that no cogent evidence has been produced to show that it is a passage. The Court after discussing the evidence produced on the record held that the defendants in counter-claim have failed to produce on file any document to prove that the suit land was ever left by Central Government for the passage leading to their land. They have not brought on file any document showing their ownership. The learned Civil Judge (Senior Division), Gurdaspur also held that the defendants have also failed to produce on file any cogent oral or documentary evidence to prove that the suit land adjoins to their land. These findings are upheld in the appeal. The learned counsel for the appellant has contested the findings of fact and has not shown as to what substantial question of law arises in this regular second appeal.

From the perusal of the judgments, I do not find that any finding is against evidence or the evidence has been misread by the Courts below. The concurrent findings given by the Court below are correct and as per law.

Therefore, from the record, I find that the findings of fact are given on correctly appreciating the evidence concurrently by the Courts below and no question of law, much less any substantial question of law arises in the present regular second appeal.

Nothing has been shown that the concurrent findings recorded by the learned Courts below suffer from any infirmity or are contrary to the record, which are correct and as per law. These do not require any interference from this Court and the same are upheld.

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Finding no merit in the present regular second appeal, the same is dismissed.

March 23, 2015.

(Inderjit Singh)
Judge

hsp