

**114 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 2150 of 2015 (O&M)

Decided on: 18.5.2015.

Hukmi

... Appellant

Versus

Kala and another

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ajay Jain, Advocate,
for the appellant.

K.C.PURI.J.

This is an appeal directed by the plaintiff appellant against the judgment and decree dated 9.4.2015 passed by Sh. Narender Kumar, District Judge, Sonipat vide which the appeal preferred by the plaintiff appellant against the judgment and decree dated 9.4.2014 passed by Sh. Sukhdev Singh, Civil Judge (Junior Division), Gohana was dismissed.

In brief, the case of the plaintiff is that his father Mange Ram and one Rai Singh were recorded as owners in equal share in Khewat No.165, Khatoni No.169, measuring 24K-13M, situated in the revenue estate of village Dhanana Aladadpur, Tehsil Gohana, District Sonipat. Rai Singh expired and his share was inherited by his legal heirs. Mange Ram also expired and his share was inherited by

plaintiff and his brother Chander Singh. Further it has been pleaded that about 35 years ago an oral partition took place between Mange Ram and Rai Singh regarding plot No.476 measuring 5 marlas and according to the terms of oral partition, the said plot fell into the share of Mange Ram and now plaintiff and his brother Chander Singh are in possession of equal shares of the said plot. Legal heirs of Rai Singh had no concern with the said plot. Plaintiff has constructed his house over the said plot towards southern side and his brother Chander Singh has constructed his house over the said plot about 30 years ago. The house of the plaintiff is marked with letters 'ABCD' as shown in the site plan attached with the plaint. It has been further pleaded that defendants being strong and high headed persons want to demolish the wall 'CD' shown in red colour in the site plan and further want to construct their house over the said wall by claiming the same as common wall, whereas the defendants have no concern of any kind with the said wall as the said wall is exclusively owned and possessed by plaintiff and the same was constructed by plaintiff by local bricks and the defendants have no right, title or interest to do so. On 30.8.2008 defendants tried to demolish the wall marked as 'CD' and to construct house over the said wall but due to timely intervention of respectables of the village, they could not succeed. The plaintiff requested the defendant not to do so but the defendants refused to accede to his request on 1.9.2008. Hence the present suit for permanent injunction.

On notice, defendants appeared and filed written

statement taking preliminary objections of maintainability, locus-standi, estoppel, suppression of true and material facts. It was pleaded that the story of oral partition between Mange Ram and Rai Singh is white lie. It has been denied that plot No.476 fell into the share of Mange Ram. The plaintiff and his brother have no right, title or interest in the said plot. It has been further pleaded that Wall marked 'CD' is part of plot No.477 which is owned and possessed by defendants. Rest of the allegations made in the plaint were denied.

From the pleadings of the parties, following issues and additional issues were framed:-

1. Whether plaintiff is entitled to a decree for permanent injunction as prayed for ?OPP
2. Whether the present suit is not maintainable in the present form ?OPD
- 2(a) Whether LC report dated 17.3.2010 is liable to be set aside on the grounds mentioned in the objections ?OPP
3. Whether the plaintiff has no locus-standi to file the present suit ?OPD
4. Whether the plaintiff has not come to the Court with clean hands ?OPD
5. Whether the plaintiff has suppressed the material facts from the Court ?OPD
6. Whether the plaintiff is estopped to file the present

suit by his own act and conduct ?OPD

7. Relief.

In order to prove his case, the plaintiff himself stepped into the witness box as PW-1 and examined PW-2 Sohan Lal Verma and closed the evidence.

On the other hand, the defendants did not examine any witness.

Issues No. 1, 2 and 2(a) were decided against the plaintiff and in favour of the defendants. Issues No.2 to 6 were decided against the defendants and in favour of the plaintiff. Consequently, suit of the plaintiff was dismissed vide judgment and decree dated 9.4.2014 passed by Sh. Sukhdev Singh, Civil Judge (Junior Division), Gohana.

Feeling dis-satisfied with the aforesaid judgment and decree dated 9.4.2014, the plaintiff filed appeal. The appeal was dismissed vide judgment and decree dated 9.4.2015 passed by Sh. Narender Kumar, District Judge, Sonipat.

Still feeling dis-satisfied with the aforesaid judgments and decrees dated 9.4.2014 and 9.4.2015, the plaintiff appellant has filed the present regular second appeal.

The appellant in paragraph No.9 of the grounds of appeal has mentioned that the following substantial questions of law have arisen:-

- (i) Whether the local Commissioner report is liable to be set aside on the grounds mentioned in the

objections ?

(ii) Whether the learned Courts below erred in law in denying the decree for permanent injunction ?

Learned counsel for the appellant has submitted that report of the Local Commissioner is liable to be set aside. The same has not been proved in accordance with law. The judgments of both the Courts below are liable to be set aside on that ground. The wall marked as 'CD' is exclusively owned by the plaintiff and the defendants have no right to use the same. So, both the Courts below have committed grave error in dismissing the suit of the plaintiff for injunction.

I have carefully considered the said submissions but do not find any force in that submission.

The dispute raised by the plaintiff during the course of arguments is regarding the wall marked as 'CD'. The Local Commissioner has been appointed who has reported that plaintiff has encroached upon part of plot No.477. Since there is a finding of fact returned by both the Courts below that plaintiff has failed to prove the exclusive ownership of wall marked as 'CD', no interference can be made in the regular second appeal. The finding regarding factum of wall marked as 'CD' has been returned against the plaintiff. There is nothing on the file that the said finding is perverse or is the result of misinterpreting or misreading the evidence on the file. Even according to the plaintiff, the wall intervenes the house of plaintiff and defendants. No documentary evidence has been produced regarding

exclusive ownership of the wall in question. So, I have no hesitation in holding that no substantial question of law has arisen in the present case.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

18.5.2015.
SN

(K.C.PURI)
JUDGE