

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2917 of 2015 (O & M)

Date of Decision: *September 24, 2015*

Balbir Singh

..... APPELLANT

VERSUS

Suraj Bhan & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. Saurabh Dalal, Advocate, for the appellant.

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Jaspal Singh, J

CM No.7069-C of 2015

Delay of 469 days in refiling the appeal is
condoned as per averments in the application duly supported by
affidavit.

Application is allowed.

CM NNo.7070-C of 2015

For reasons mentioned in the application, delay of 20 days in filing the appeal is condoned.

Application is allowed.

RSA No.2917 of 2015

The instant appeal has been preferred by the plaintiff against judgment & decree dated July 23, 2013 passed by the first appellate court whereby judgment & decree dated March 24, 2012 rendered by the trial court have been upheld and findings affirmed.

Briefly stated, the facts of the case are that plaintiff preferred a suit for permanent injunction against the defendants claiming that plaintiff and his brother – Dharambir Singh are owner in possession of a residential house situated in the Abadi Deh of village Khudan, District Jhajjar, which is marked by letters ‘ACEFGH’ in the plaintiff’s site plan. The said house was constructed about 20 years ago. There is a courtyard left by him in the plot which is marked by letters ‘BCEF’ in the site plan. Defendants were allotted a plot bearing Khasra No.175, during consolidation of holdings held in the village. The said plot is abutting to a passage on the eastern side as well as ‘Lal Dora’ on the western side. After Lal Dora i.e. red

line of the village, the residential house of plaintiff is located. Plaintiff pleaded that defendants wanted to occupy the open land of plaintiff, shown by letters 'BCDI' in red colour in site plan, to which they have no right, title or interest. Defendants used to throw vegetable waste and cattle dung on the suit land. Plaintiffs objected to it but defendants refused to accede. The suit was contested by the defendants by filing written statement. From the pleadings of the parties, issues were framed by the trial court.

In order to prove their case, parties led their evidence. After hearing learned counsel for the parties and appraising evidence/material available on record, suit filed by the plaintiff was dismissed by the lower court vide judgment & decree dated March 24, 2012. Appeal preferred by the plaintiff against the aforesaid decision of lower court was also dismissed by the first appellate court vide judgment & decree dated July 23, 2013.

Now, the plaintiff has challenged the judgments and decrees rendered by both the courts below.

While assailing the impugned judgments and decrees, it has been ebulliently argued by learned counsel for the appellant that the appellant and his brother – Dharambir

Singh are owners in possession of the residential house situated in the Abadi Deh of village Khudan, Tehsil & District Jhajjar which has been depicted as letters 'ACEFGH' in the site plan Ex.P1. The said house was constructed by the appellant – plaintiff more than 20 years ago and at that time, the disputed premises shown with letters 'BCDI' was left as courtyard. The premises shown in green colour in the site plan Ex.P1 was allotted to respondents – Suraj Bhan & others, during consolidation of holdings held in the village which bears khasra No.175. The property owned by the respondents is abutting to the passage on its eastern side. Both the courts below have not taken into consideration the fact that even as per the revenue record i.e. Annexure P-2, copy of Aks-lathha, there is no passage in between Khasra No.176 belonging to the appellant and Khasra No.175 owned and possessed by the respondents. Infact, there is no passage existing in between the above referred khasra numbers. Both the courts below have grossly erred in arriving at the conclusion that the property depicted with letters 'BCDI' is a passage or is being used as such by the parties as well as the inhabitants of the village. Thus, findings recorded by the learned trial court and affirmed by the lower appellate court are not maintainable being not in consonance

with the evidence available on file and deserve to be set aside by way of acceptance of the instant appeal.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and have scanned the impugned judgments passed by the courts below.

The main controversy involved in the lis is whether the site depicted with letters 'BCDI' in Ex.P1 (site plan) is a courtyard belonging to the appellant – plaintiff or that it is a public street?

No doubt, the appellant has also placed on record a copy of Aks-Shajra Ex.P2 which depicts that there is no passage existing in between the land belonging to the appellant and respondents – defendants. But, one thing is evident that there is no documentary evidence showing the ownership or possession of the appellant over the suit property. It is worthwhile to mention here that the site in question shown in site plan Ex.P1 with letters 'BCDI' which was unauthorized occupied by the appellant, was got vacated by the Gram Panchayat, that too, as per the direction of the SDO with the assistance of the police and administration. There is a specific reference to the letters giving direction to the SDO i.e. Ex.D2 as

well as police assistance provided to the Gram Panchayat for getting the premises vacated. Even otherwise, the aforesaid fact stands proved from the testimony of DW2 to DW5. The said circumstances are sufficient to reach at a conclusion that the site shown as 'BCDI' is not a courtyard or a part of the house of appellant, rather, there is a street which vests in the Gram Panchayat. The appellant – plaintiff cannot be said to be in possession thereof. In the facts and circumstances narrated above, the appellant – plaintiff has also got no locus standi to prefer the instant appeal seeking permanent injunction against the respondents, especially, when he has failed to implead the Gram Panchayat as a party to the instant lis.

This Court does not find any merit in the contentions put-forth by learned counsel for the appellant and is of the considered view that there is no legal or substantial question involved in the matter what to say of any substantial one.

In the light of aforesaid discussion, this Court finds no merit in the instant appeal and the same is dismissed.

September 24, 2015

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(Jaspal Singh)
Judge