

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3315 of 2015(O&M)
Date of decision: 02.11.2015

Karan Singh

... Appellant

Versus

Dharam Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Shokeen Singh Verma, Advocate
for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 29.08.2013. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 06.02.2015, plaintiff is before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Briefly, in a suit filed by the plaintiff, he claimed to be the owner in possession to the extent of 1/5th share in the suit property measuring 278 square meters, marked by letters ABCDEF and shown in red colour in the site plan, appended with the plaint. It was maintained that plaintiff with his

brothers had purchased the said property from Sudhan son of Suprpa, Indraj, Phalad, Bishan Lal son of Maman, etc. vide sale deed dated 11.08.1978. Pursuant to a mutual partition, plaintiff got his 1/5th share in the northern side of the said plot, depicted by letters ABIGH. There was a common gali of the parties shown in the plan by letters GEDH, situated in between the plot of the plaintiff and the defendant. Parties have been using the said gali for ingress and egress to their respective properties, but as defendant had encroached over the common gali/street marked by letters GEDH, thus, the suit.

In defence, it was denied, inter alia, that the house referred to in para No.1 of the plaint, belonged to Surajbhan, Kuldeep and Ajit, sons of Mam Chand. It was pleaded that plaintiff had no concern therewith. Plaintiff was neither the owner nor in possession of the plot marked by letters ABIGH. Likewise, he had no concern with the property shown by letters GEDH, as the gali shown by said letters is the exclusive gali of the defendant and meant for his property. Earlier, brothers of the plaintiff had interfered in possession of the defendant over the portions GFDH and GEDH, as they intended to encroach upon a part thereof. As a result, defendant had filed an injunction suit against them, which was decreed vide judgment and decree dated 02.05.2006 and the encroachment caused by them was ordered to be removed.

And now, plaintiff had filed the present suit at the behest of his brothers.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, both the courts had concurrently concluded that in a suit filed by the defendant against the brothers of the plaintiff, qua the suit land, a decree for injunction was passed against them on 02.05.2006. And, as a result, they were restrained from causing any interference in possession of the defendant over the suit land and portion GFDH as also to remove the encroachment caused therein. Plaintiff had conceded in his cross-examination that, in fact, he had constructed a house in Jaipur in the year 1978 and was settled there, post retirement. For, he also admitted that the present suit was filed by him on the asking of his brother Kuldeep, thus, the plaintiff had initiated a proxy litigation at the behest of his brothers, though they themselves had suffered a decree dated 02.05.2006. Even otherwise, the land purchased by the plaintiff with his brothers, vide sale deed dated 11.08.1978, was a joint property and once in a previous litigation, qua the suit land, rights of other co-sharers had been finally determined, plaintiff could not claim the relief prayed for by way of present suit. Further, plaintiff claimed the suit land as common street on the basis of a site plan (Ex.D1), appended with the sale deed dated 11.08.1978, wherein the vendor had

shown the street having a dead end. Defendant too had purchased a piece of land from the same vendor on 14.12.1992. And, an analysis of the site plan (Ex.D1) revealed that common passage before the plots of both the parties was shown in southern direction as “*rasta saream*”. Whereas, the suit land was depicted therein as “*band gali*”. Just because the site plan (Ex.D1) showed a common passage towards southern side of the plot of the plaintiff and the dead street towards its western side, the street with a dead end, on the western side, could not be claimed as a common street/gali. In short, plaintiff failed to prove his claim.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been recorded by both the courts were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

November 2, 2015
Rajan

(Arun Palli)
Judge