

In the High Court of Punjab and Haryana at Chandigarh

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C.M. No.2408-C of 2014 and
R.S.A. No.1054 of 2014 (O&M)

.....

Date of decision:10.3.2015

Dharampal and others

.....Appellants

v.

Hukam Singh

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Rakesh Kumar Sharma, Advocate for the appellants.

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Inderjit Singh, J.

C.M. No.2408-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 5 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.1054 of 2014 (O&M):

This regular second appeal has been filed by the appellants-plaintiffs aggrieved against the impugned judgment and decree dated 12.11.2013 passed by the learned District Judge, Nuh, affirming the impugned judgment and decree dated 5.9.2013 passed by the learned Civil Judge (Junior Division), Nuh, whereby the civil suit filed by the plaintiffs-appellants has been dismissed.

It is stated in the grounds of appeal that the impugned judgment and decree dated 5.9.2013 passed by learned Civil Judge (Junior Division), Nuh, District Mewat, thereby dismissing the suit of the appellants (hereinafter referred to as 'the plaintiffs') and the impugned judgment and decree dated 12.11.2013 passed by learned District Judge, Nuh, District Mewat, thereby dismissing the appeal of the appellants against the impugned judgment and decree dated 5.9.2013 are against law and facts and the same are liable to be set aside.

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

From the record, I find that Dharampal, Tara Chand and Puran Singh-plaintiffs filed the suit against Hukam Singh-defendant/responent for declaration with permanent injunction.

The brief facts of the plaintiffs' case, as stated in the plaint, are that the plaintiffs are owners in possession of land situated within the 'Abadi Deh' of Village Atta, Tehsil Nuh, District Mewat, marked with letters 'ABCDEFGHI', shown by blue and red colour in the site plan. The property marked by letters 'EFGH' is a street, which leads to the property of the plaintiffs and is ten feet wide. The plaintiffs are using this street for the last 30 years and there was no objection from the side of the defendant/respondent for using this street and in this way the plaintiffs have acquired easementary rights over this street. The defendant is threatening to block this street and wants to encroach upon the suit property.

The defendant in the written statement mainly stated that the

suit land is part and parcel of Khasra No.89 and the plaintiffs or their father has no right and title in this land. The defendant claimed himself to be owner in possession of the suit land and the remaining pleadings taken in the plaint were denied by him.

Plaintiff No.1-Dharampal examined himself as PW-1 and Khushal Sharma (Draftsman) as PW-2 and placed on record Ex.P.1 Jamabandi for the year 2005-06 and Mark-A photo copy of the ration card. Thereafter, the evidence of the plaintiffs was closed. To rebut the claim of the plaintiffs, defendant examined Rajender Parshad, Patwari as DW-1, Devender Bhardwaj (Draftsman) as DW-2, Rakesh Yadav as DW-3 and defendant Hukam Singh himself as DW-4. He placed on record Ex.D.1 site plan, Ex.D.2 Jamabandi for the year 2005-06, Ex.D.2 (again) receipt of Municipal Committee regarding renewal of Draftsman licence and Ex.D.3 judgment dated 3.8.2011.

The learned Civil Judge (Junior Division), Nuh, after appreciating the evidence on record held that the solitary statement of the plaintiffs without any other corroboration is insufficient to prove their case and held that the defendant has rebutted the claim of the plaintiffs through strong evidence. The lower Court also held that the plaintiffs are not owners in possession of the property as shown in the site plan. The Court after appreciating the evidence correctly also held that there is no documentary evidence produced on the record to prove their ownership or possession. DW-2 Devender Bhardwaj, Draftsman, who prepared the site plan on behalf of the defendant has submitted that he visited the spot and

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prepared the same and deposed that there is no such street on the spot. The findings of fact are given by the Courts below correctly on the basis of evidence produced on the record. Both the Courts have given concurrent findings of fact in favour of the defendant and against the plaintiffs.

At the time of arguments, learned counsel for the appellant failed to point out that any substantial question of law arises in this regular second appeal.

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.

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

March 10, 2015.

(Inderjit Singh)
Judge

hsp