

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

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Regular Second Appeal No.3785 of 2015 (O&M)
Date of Decision: December 08, 2015

Bakhshish Singh and another

...Appellants

Versus

Darshan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. M.S. Khaira, Senior Advocate
with Mr. Randeep S. Khaira, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.9308-C of 2015

Prayer in this application is for exemption from filing certified copy of judgment and decree dated 23.07.2012 passed by learned Civil Judge (Junior Division), Dera Bassi and Annexure A-1 and typed copy of judgment and decree dated 21.07.2015 and grounds of appeal filed before the learned District Judge.

Application is allowed subject to just exceptions.

Exemption from filing certified copy of judgment and decree dated 23.07.2012 passed by learned Civil Judge (Junior Division), Dera Bassi; Annexure A-1; typed copy of judgment and decree dated 21.07.2015 and grounds of appeal filed before the learned District Judge, is granted.

CM No.9307-C of 2015

Prayer in this application is for permission to place on record Exhibit P-3 site map as Annexure A-1.

Application is allowed subject to just exceptions.

Photocopy of site map is taken on record as Annexure A-1.

RSA No.3785 of 2015

Challenge in this appeal is to the judgment and decree dated 23.07.2012 passed by the Civil Judge (Junior Division), Dera Bassi, whereby the suit filed by the appellants-plaintiffs for permanent injunction restraining the respondents-defendants, their servants, agents and representatives from interfering in the peaceful possession of the plaintiffs over the house owned and possessed by them shown with letters 'ABCDEFGHJKLM' and 'BNOP' in the site plan attached and further restraining the respondents-defendants from demolishing any part of the house of the appellants-plaintiffs for making passage through the same at the place shown as 'ABCD' in the site plan, situated in village Dhanoni, Tehsil Dera Bassi, District Mohali, stands dismissed, appeal against which preferred by the appellants-plaintiffs has been dismissed by the Additional District Judge, Sahibjada Ajit Singh Nagar (Mohali), on 21.07.2015.

2. It is the contention of learned senior counsel appearing for the appellants-plaintiffs that the findings as recorded by the Courts below are not based upon proper appreciation of the pleadings and the evidence as the it has been misread. He contends that the Courts below have admitted the factum that there is no dispute with regard to the building of the houses and the only issue involved is with regard to the claim of the respondents-defendants qua the 5 feet passage marked as 'ABCD' which is between the two houses measuring 5'-3" X 27'-29", which the respondents claim to be a common passage whereas the appellants-plaintiffs assert that it is the part of their house. He contends that the alleged path/passage divides the total area of the land in the middle between the constructed buildings i.e. the pakka and katcha portions of the house. He contends that such a passage could not

have been given by the appellants-plaintiffs, as has been asserted by the respondents-defendants. Learned counsel has referred to various documents which have been placed on record by the appellants establishing the fact that there was no passage at the site, in fact, it is the respondents, who are making an effort to encroach upon the land of the appellants. Prayer has thus been made for setting aside the impugned judgments and decreeing the suit of the appellants-plaintiffs.

3. I have considered the submissions made by learned senior counsel for the appellants and with his able assistance, have gone through the impugned judgments.

4. It is not in dispute that the onus was upon the appellants-plaintiffs to prove that the disputed area marked 'ABCD', as shown in the site plan Exhibit P-3, is part of their houses situated one on the eastern and the other on the western side of the passage. Whatever evidence has been brought on record, especially those in the form of documents, are of the period after 19.12.2006 stating that the disputed passage does not exist at the spot. To the contrary, the evidence which has been brought on record by the respondents-defendants, clearly establishes that the disputed passage 'ABCD' is/was in existence and further towards its southern side wall of bricks laid in mud was constructed by the appellants-plaintiffs on 05.12.2006. Reference in this regard can be made to the documents Exhibit D-1 to D-9, where such a fact stands recorded. Respondents-defendants have brought on record the writing dated 10.12.1999 Exhibit D-10, wherein it has been stated that the appellants-plaintiffs Bakhshish Singh and Kesar Singh have left 5 feet wide passage from their joint khata for respondents-defendants Darshan Singh and Hakam Singh as well as Balbir Singh. Both

the parties had agreed to the compromise and it was further stated that they shall get 5 feet wide passage brick paved at their own expenses. This writing was signed by the Sarpanch as well as the plaintiffs Bakhshish Singh, Kesar Singh and Balbir Singh brother of respondent-defendant No.2 Hakam Singh. Although Bakhshish Singh plaintiff No.1, who appeared as PW-9, denied his signatures thereon but when Darshan Singh respondent-defendant No.1 appeared as DW-2 and deposed regarding the said document, he was not cross-examined by the appellants-plaintiffs with respect to this document. Further it is not the stand of the appellants-plaintiffs that it was a forged and fabricated document. DW-2 Avtar Singh, Sarpanch of the village also made statement corroborating the plea of the respondents-defendants that there was an agreement between the parties and was written down on 10.12.1999. It was further stated that a wall has been constructed by the appellants-plaintiffs to obstruct the passage leading to the house of the respondents-defendants. Exhibit D-17 and D-18 are photographs which show existence of the disputed passage and in these photographs, there is no wall and the tin sheet door of the house of the respondents-defendants towards the disputed passage is visible. This shows that the wall has been subsequently constructed and it was not in existence prior thereto.

5. In the light of the above facts, the findings as recorded by the Courts below holding that the disputed area marked as 'ABCD' as not a part of the house of the appellants but is a passage and the appellants had illegally encroached over the disputed area by constructing a wall to block the passage to the house of the respondents-defendants cannot be faulted with. It has also come on record that this is the only passage to the house of

the respondents-defendants. The Courts below have rightly not granted the injunction as prayed for.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.9309-C of 2015, stands disposed of as infructuous.

December 08, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE