

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

RSA No.1642 of 2014 (O&M)

Date of decision:10.12. 2015

Gurcharan Singh

-Appellant

Versus

Guddi and others

Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Shashikant Gupta, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (ORAL)

CM No.3977-C of 2014

For the reasons mentioned in the application, delay of
1 day in filing the appeal is condoned.

Application stands disposed of.

RSA No.1642 of 2014

[1]. Plaintiff is in second appeal against the concurrent
judgments and decrees passed by the Courts below.

[2]. Plaintiff filed suit for mandatory injunction directing the
defendants to remove the wall illegally constructed by

encroaching upon the area and reducing the width of the deori from 6 feet to 3 feet owned by the plaintiff. Plaintiff alleged that defendants are owners in possession of House No.1240/27, Gali Kambowali, Jalianwala Bagh, Amritsar which is adjacent to the house of the plaintiff. Plaintiff is in possession of house bearing No.1240/27, measuring 18 yards x 4 yards owned by Annu. Defendants have encroached upon area of the house of plaintiff, thereby creating inconvenience to the plaintiff and members of his family. Even the notices issued to the defendants went in vain.

[3]. Defendants have contested the claim of the plaintiff by taking all the pleas. The wall in question is stated to be old and claimed that defendants are not in possession of any area belonging to the plaintiff, nor they have encroached the area of House No.1241/27. Defendants No.6, 8, 9 and 10 did not contest the suit and were proceeded against ex parte.

[4]. Replication was filed. On the basis of the pleadings of the parties following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP

2. Whether the suit is legally not maintainable? OPD

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the present suit is hopelessly time barred? OPD

5. Whether no cause of action accrued in favour of the plaintiff to file the present suit? OPD

6. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the notice of this court? OPD

7. Relief.”

[5]. The parties led their respective evidence on the aforesaid issues. Trial Court took issues No.1 and 4 collectively and held the same against the plaintiff. There is no documentary evidence adduced on record. The copy of sale deed which has been produced is in 'Urdu' and translated copy of the same has been placed on record as Mark-B. Plaintiff was under the legal obligation to prove the construction of alleged wall vide which defendants have encroached upon the area of the plaintiff, thereby reducing the width of the deori from 6 feet to 3 feet. No scientific evidence has been led on record, only oral evidence has been led. Plaintiff has to stand on his own legs. The cross examination of plaintiff as PW-1 shows that the earlier property of the defendants and the property of plaintiff was the same in the year 1995 . During the flood it was partitioned between the plaintiff and defendants. The alleged wall between the property was constructed in the year 1955 forcibly. Plaintiff has admitted that there is no measurement regarding thickness of the wall as shown in Mark-A (sale deed). The translated copy of which is Mark-B. Notices were not issued to the defendants by any

registered post. Plaintiff has admitted that he is not in possession of any old documents that he was owner of the property in question. Even PW 2 Bawa Singh has also admitted that wall in question had fallen down in the year 1947 and thereafter, it was re-constructed in the year 1955. Witness could not tell the thickness of wall. The witness also admitted that defendants are residing in the property for the last 150 years. The third witness Gulwinder Singh also corroborated the stand of PW-2 Bawa Singh. There is no evidence of new construction. Evidently the alleged wall is claimed to be between the properties of respected parties.

[6]. In a case of encroachment, demarcation is *sine qua non* for determining the encroachment by any of the party. Nothing material has been placed on record viz. the title of the property and the demarcation if any conducted by any Competent Officer. Only oral evidence has been led that has been refuted by oral evidence of the defendants. In view of existence of wall since 1955, the suit appears to be barred by limitation as well. The findings recorded under Issues No.1 and 4 have material bearing on other issues also. Defendant No.7 had already expired before filing of the suit. Legal representatives of defendant No.7 were not impleaded on record. Even, date of death of defendant No.7 is not forthcoming in the replication or otherwise in the evidence. No relief could be granted against the

dead person. The suit qua defendant No.7 is not maintainable. Qua issues No.3, 5 and 6 no arguments have been raised, nor any evidence was led in respect of these issues. Issues were ultimately decided against the defendants. On the basis of findings recorded under issues No.1, 2 and 4, the suit was dismissed by the trial Court and the findings recorded by the trial Court were upheld by the lower Appellate Court.

[7]. I have considered the submissions made at the bar.

[8]. Evidently the alleged wall was constructed in the year 1947 and reconstructed in the year 1955. There is no documentary evidence led by either of the parties on record except the oral evidence. The plaintiff has to stand on his own legs. The title of the plaintiff by virtue of sale deed in 'Urdu' remained only a mark document even on translated version as Mark-B. In the absence of any demarcation, no encroachment could have been detected by any lawful mechanism, nor any evidence has been made to adduce any material in the form of revenue record. The witnesses of the plaintiff have demolished the case of the plaintiff when they commented upon the age of wall which is admittedly an old wall constructed in the year 1947 and reconstructed in the year 1955.

[9]. In considered opinion of this Court, no indulgence can be granted in favour of plaintiff in Regular Second Appeal. There is no material on record worth consideration, nor it can be pointed

out during course of arguments though the appellant has framed question of law in para No.9 of the grounds of appeal but these are not questions of law much less substantial questions of law. No question of law arises in the present case.

[10]. The controversy seems to be based on factual details. The facts could not be substantiated by way of any evidence by the plaintiff, therefore, this Court is of the view that both the Courts below have rightly dismissed the suit of the plaintiff. There cannot be any exception to the findings recorded by the Courts below. Resultantly, this appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 10, 2015
prince