

RSA No.837 of 2014
Date of decision:18.02.2015

GURDEEP SINGH Appellant

VERSUS

PUNJAB MANDI BOARD AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Jasminder Singh Thind, Advocate
for the appellants.

MAHAVIR S. CHAUHAN J. (ORAL)

Unsuccessful plaintiff Gurdeep Singh has filed this regular second appeal to challenge judgment/decreed dated 21.09.2013 passed by the learned Additional District Judge, Amritsar ("First Appellate Court" for short) whereby judgment/decreed dated 18.04.2012 passed by the learned Additional Civil Judge (Senior Division), Amritsar ("trial Court" for short) dismissing suit for mandatory injunction brought by the appellant, has been upheld.

I have heard learned counsel for the appellant.

It is vehemently argued on behalf of the appellant that in the evidence brought on record on behalf of the appellant, it has been sufficiently proved that the road in question has been constructed over some portion of land belonging to the appellant but without payment of any compensation and as such his suit is liable to be decreed.

A perusal of the impugned judgment would reveal that the appellant had approached the learned trial Court for grant of a decree of

mandatory injunction to direct the respondents to remove the newly constructed road known as Road-Dalam to Dudhrai over some portion of khasra No.9/4/2 (6-18), 8/23 (5-8), 9/3/2 (0-15), 6/1 (5-8), khata/khatauni No.78/159, 129/305 as per jamabandi for the year 2004-05 by alleging that the said land belongs to him and the respondents have constructed the road without any authority and have thereby caused a financial loss to him to the extent of Rs.one lac.

Suit was contested by the respondents by filing a written statement wherein, in addition to pleading some preliminary objections, it was stated that the road was constructed after getting the land demarcated and no objection, whatsoever, was raised by the appellant.

Issues were framed, evidence was received and parties were heard by the learned trial Court to reach a conclusion that the appellant was unable to prove that the road in question was, in fact, laid on the land belonging to him. Accordingly, his suit was dismissed vide judgment/decreed dated 18.04.2012 which has been upheld in appeal by the first appellate Court vide judgment dated 21.09.2013.

A perusal of the record would reveal that the appellant, no doubt, is owner in possession of the land as mentioned hereinbefore but none of the witnesses appearing on behalf of the appellant has stated even a single word that the respondents are in possession of land belonging to him. Reference has been made by the Courts below to a notice Exhibit PX, admittedly, served by the appellant upon the

respondents under Section 80 of the Civil Procedure Code, 1908 informing that road in question was being laid on the land adjoining his land. Though, the notice is not available on record of this appeal but learned counsel for the appellant has read over the notice in open Court but has not been able to controvert that in para No.2, therein it has been specifically stated that the road in question was being laid on the land adjoining the land of the appellant. This fact coupled with the fact of failure of witnesses examined on behalf of the appellant to say as to what land comprised in what khasra number belonging to the appellant has been encroached by the respondents to lay the road in question, renders case of appellant meritless.

In view of the above, I do not find any ground to interfere with the concurrent findings of fact recorded by the Courts below, more so because the appeal is not shown to involve any substantial question of law.

Dismissed.

No costs.

(MAHAVIR S. CHAUHAN)
JUDGE

February 18, 2015
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