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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1948-2012 (O&M)
Date of decision : 09.08.2016

Kulbushan Kumar and another

... Appellants

Versus

Suresh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sourabh Goel, Advocate
for the appellants.

Mr. Dilpreet Singh, Advocate
for respondent Nos.1 to 3.

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?

AMIT RAWAL, J. (ORAL)

The appellants-defendants No.1 and 2 are aggrieved of the concurrent findings of fact, whereby the they have been restrained from making any structural additions, alterations in common deori, coutyard, platform, stairs and common walls AB as shown in red in the site plan attached and forming part of the property No.B-IV-1282 to B-IV-1287 situated at Mohalla Thapra, Ludhiana. However, they have been given right to plaster the common property abutting the property owned by them.

Mr. Sourabh Goel, learned counsel appearing on behalf of the appellants-defendants No.1 and 2 submits that the respondents-plaintiffs filed the suit for permanent injunction seeking restraint order against the

appellants-defendants No.1 and 2 by relying upon the sale deed dated 07.04.1981 (Ex.D-1), but both the Courts below have misread its contents, much less, site plan (Ex.D-2) and owing to the aforementioned misreading/erroneous pleadings, appellants-defendants No.1 and 2 have been restrained even from using their own private property i.e. uncommon area. The lower Appellate Court being the last Court of fact and law was enjoined upon the obligation to appreciate the oral and documentary evidence. It is a fit case where the matter is required to be remitted back to the lower Appellate Court, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Dilpreet Singh, learned counsel appearing on behalf of the respondents-plaintiffs No.1 to 3 submits that the concurrent findings of fact cannot be interfered with. Both the parties are co-sharers and therefore, as per the ratio decidendi culled out in the judgment of Full Bench judgment of this Court in *“Bhartu V/s Ram Sarup” 1981 PLJ 204* and Division Bench judgment in *“Bachan Singh Vs. Swaran Singh” 2000(3) RCR (Civil) 70*, the co-sharer cannot change the nature of the property adverse to the interest of the co-sharer. The judgment and decree of Courts below are based upon the appreciation of oral and documentary evidence, much less, site plan (Ex.P-1), thus, urges this Court for dismissal of the appeal as no substantial questions of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and as well as the record of the trial Court.

It is matter of record that the injunction is in respect of the part of the property bearing No.B-IV-1282 to B-IV-1287. The appellants-

defendants No.1 and 2 are only owner of the property bearing No.B-IV-1282, whereas other owners of the remaining property have not assailed the findings. The aforementioned finding of mine would be confined to the property bearing No.B-IV-1282. As per the sale deed (Ex.D-1), the description of the property has been given as under:-

“Property bearing No.B-IV-1282 measuring 65 square yards. Two rooms are at double storeys and one room at triple storey. One Common varandha. One bathroom. Common stair case. Common entrance which has been shown as broken down. One chaubara which is broken on the entrance and stair case and well as the common wall on the northern side.

As per the submissions of Mr. Sourabh Goel, the Courts below have not taken into consideration the site plan (Ex.D-2) and the contents of the sale deed while issuing the restraint order viz-a-viz the stairs and as well as the common walls and courtyard, but some portion of the courtyard is private property of the appellants-defendants No.1 and 2 and similar is the position with one stair case and common wall. He has drawn the findings of the lower Appellate Court particularly paragraph Nos.10 to 12 which reads thus:-

10. As regards evidence on record, in the oral evidence plaintiff Suresh Kumar stepped into witnessed-box as PW-1 and proved his affidavit Ex.PW1, Lajja Wanti stepped into the witness-box as PW-2 and proved her affidavit as Ex.PW2. Varinder Kumar has been examined as PW3 who proved his affidavit as Ex.P3 and Tarlok Chand has been examined as PW4 who proved his affidavit Ex.PW4. Beside these affidavits, documents have been proved on record by plaintiffs, i.e. site plan as Ex.P1, ration card of plaintiffs as Ex.P2, electricity consumption charge bill as Ex.P3, report of local

commissioner as appointed by the Court as Ex.P4 along with presence sheet as Ex.P5, one document is in Urdu as Ex.P6, but be read into evidence as it is not language of Court. Ex.P6., but be read into evidence as it is not language of Court. Ex.P7 is the application moved by Prakash Devi address to SHO, Police Station, Division No.4, Ludhiana Ex.P8 is rough site plan. In cross-examination nothing untoward has been stated by the witnesses, rather case been further substantiated. Moreover, case is based on the documentary evidence and oral evidence has not stated anything and not to create any right in the property. For defendants Kulbhushan Kumar stepped into witness-box as DW1 and proved his affidavit as Ex.DW1/A. Defendants have proved the sale deed Ex.D1 which is admitted by the plaintiff along with its site plan Ex.D2, and copy of death certificate of Parkash Devi is produced on record as Ex.D3.

11. The document sale deed Ex.D1 is admitted and the same has been mentioned in the pleadings of the plaintiff and site plan Ex.D2. By perusing these documents, it is very much clear that it is mentioned that staircase, courtyard and deori are common and one wall measuring 28' 3" on northern side is common. The defendants No.1 and 2 had drawn their title over the property vide sale deed Ex.D1 and they have also drawn right to use common properties i.e. common wall, deori, open courtyard and stair case.

12. The case of the plaintiff is that defendants are trying to make new construction in this common properties and they wanted to plaster the common wall and also to make new construction at the first of the deori is common among the respondents in which many persons are residing. At the first floor of the deori there is title of the defendants No.1 and 2 which is a room over the deori. The case of defendants is that to strengthen their properties as purchased vide sale deed Ex.D1 they want to plaster the common wall to make it sturdy.

Ld. Lower Court while appreciating the evidence has rightly come to the conclusion that defendants cannot make new construction over the properties which are common among the parties i.e. courtyard, staircase, platform in the form of deori and defendants have right to renovate their own portion and to plaster the wall shown as AB in the site plan. During the course of arguments, Ld. Counsel for appellants has insisted on the point that parties are co sharer as such defendants cannot be restrained and the relied upon the law cited as 'Joginder Singh and Ors v. Ajit Singh' 2010 (2) Civil Court Cases 179 (P&H), 'Jai Karan Sharma v. Ram Kumar' 2009 (2) Civil Court Cases 083 (P&H) and 'M/s DCM Shriram Consolidated Ltd. V. Jai Singh' 2006 (2) RCR (Civil) 118 (P&H). While going through these authorities by Hon'ble High Court of Punjab and Haryana, these are regarding interim injunction under Order 39 Rule 1&2 CPC. In the present case there is no such case of any interim injunction, rather defendants want to make permanent structure over the properties. Finding have been given by the Ld. Lower Court that these common properties are very much essential part of whole of the building as all the inhabitants in different places can enjoy their properties through this common property. So certainly no inhabitant can make any permanent structure in these common properties and to interfere into possession and enjoyment of the property of others. These authorities are not applicable to the present case. Ld. Lower court has rightly returned the findings in the impugned judgment. I, hereby, upheld the findings of the Ld. Lower court and upheld the judgment dated 23.5.2009. There is no merit in the appeal. Accordingly, present appeal is dismissed. Decree Sheet be drawn. Parties are left to bear their own costs. Lower court record be returned with the copy of this judgment. Appeal filed be consigned to record room."

I am of the view that no doubt that the lower Appellate Court had referred to the site plan while entertaining the submissions of the appellants-defendant Nos.1 & 2, but while giving the finding has remained oblivious of the same, much less, the contents of the sale deed, but has gone on a general presumption. In my view, while entertaining the plea being the first Appellate Court, the lower Appellate Court is required to examine the contents of the sale deed and as well as the site plan of the parties to the *lis*. Having not pondered upon such situation, I am of the view that the matter is required to be remitted back to the lower Appellate Court and accordingly, the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court to decide the appeal afresh.

Learned counsel for the parties and as well as the parties are directed to appear before the lower Appellate Court on 01.09.2016.

With the aforesaid observations, the appeal stands disposed of.

09.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No