

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

**Regular Second Appeal No.3093 of 2016 (O&M)
Date of Decision: July 13, 2016.**

Pritpal Singh and others

.....APPELLANT(s).

VERSUS

Swaran Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Vermani, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Plaintiff Swaran Singh (now respondent in this appeal) filed suit seeking relief of permanent injunction to restrain the appellants-defendants from interfering or obstructing the plaintiff from raising wall of the portion shown in red colour in the site plan (Annexure-A) attached with the plaint, of his property shown in green colour in the site plan bearing Municipal Unit No.B-IV, 70-71 situated at G.T. Road, Khanna, District Ludhiana.

2. As per the plaintiff, the suit property and other properties were owned by Siri Ram, father of plaintiff, Prem Chand and Shiv Dev Singh. In Civil Suit No.83 of 1960, a preliminary decree for partition of the suit property was passed by Sub Judge, Ludhiana and accordingly final decree dated 11.08.1967 was drawn as per which rear portion of the building known as Siri Ram building fell to the share of Shiv Dev Singh shown in yellow colour, middle portion shown in green colour, fell to the share of

plaintiff and front portion towards G.T. Road, fell to the share of Shiv Dyal Singh, shown in blue colour. Possession was delivered to the parties. Plaintiff became exclusive owner of the portion shown in green colour. Earlier Prem Chand, brother of plaintiff was licensee in three rooms on the first floor and one room on the second floor along with kitchen and thereafter, he left for abroad and Shiv Dev Singh was inducted as licensee. After the death of Shiv Dev Singh in the year 1979, licence was extended to defendants No.2 to 4 (his sons). However, the licence was revoked and in civil suit No.303 of 1995, licensee were directed to hand over possession to the plaintiff. The first appeal and regular second appeal filed against the judgment passed in civil suit No.303 of 1995, were dismissed. Plaintiff has alleged that property shown in green colour which belong to plaintiff, has no boundary wall at the point shown in red colour and was being misused by the adjoining owners. To prevent misuse of the suit property, plaintiff wanted to raise boundary wall to which the defendants objected. Hence, this suit.

3. Defendant No.1 Pritpal Singh in his written statement challenged the decree passed in civil suit No.83 of 1960 as illegal, null and void. It was alleged that he is residing in the suit property since his birth and this property was Hindu family undivided coparcenary property. The decree dated 16.03.1960 passed in the suit for partition and the final decree dated 11.08.1967 did not relate to the property in question.

Defendants No.3 and 4 in their separate written statement also contested the claim of plaintiff on the similar pleas as raised by defendant No.1.

4. Learned Additional Civil Judge (Senior Division), Khanna recorded the finding that the property shown in green colour had fallen to the share of plaintiff as per the final decree dated 11.08.1967 passed in the partition suit. Even vide judgment dated 06.09.2001 (Ex.P3) passed in civil suit No.303 of 1995 filed by plaintiff against father of appellant-defendant No.1 Pritpal Singh, plaintiff was held to be owner of the property in dispute. The judgment passed in civil suit No.303 of 1995 was affirmed in first appeal and regular second appeal. Learned Addl. Civil Judge on perusal of the evidence on record observed as follows:-

“So, from the above discussed plethora of judicial pronouncements, it has been duly proved that suit property has been partitioned and the property shown in green colour in the site plan has fallen to the share of plaintiff. Being so the case, plaintiff is very much entitled to construct/raise boundary wall in the property as shown in red colour in the site plan Ex.P-1 and defendants have no right to obstruct the same. Even DW-1 in his cross-examination has admitted that site plan Ex.P-1 is correct and he has not denied the entire litigation which has taken place between the parties and the decisions thereof. Similarly, DW-2 has also admitted site plan to be correct.”

5. The first appeal filed by the appellants-defendants was dismissed by learned Additional District Judge, Ludhiana.

6. Not satisfied, the appellants-defendants have filed this regular second appeal.

7. Learned counsel for the appellants has argued that both the Courts below have allowed the decree of injunction without there being any evidence on record that the property shown with green colour was owned by plaintiff. Plaintiff fails to examine even the draftsman, who prepared the

site plan. Without proving the final decree, the site plan prepared at the

time of final decree, the plaintiff could not be held to be owner of the suit property, as such, the judgment and decree passed by the Courts below are against facts and not legally sustainable.

8. On perusal of the file, I find submissions made by learned counsel for the appellants devoid of any merits. It appears that the parties are in litigation for the last 56 years. In the year 1960, suit for partition was filed and in the year 1967, final decree was passed. Thereafter, the litigation started with regard to the portion of the property given as licensee to appellants/their fathers. So far as the correctness of the site plan filed by respondent-plaintiff is concerned, learned Additional Civil Judge (Senior Division) Khanna has specifically observed that Pritpal Singh-appellant who appeared as DW1 in his cross-examination had admitted the site plan (Ex.P1) as correct and also admitted the entire litigation. DW2 appellant Ranbir Singh had also admitted the site plan filed by the plaintiff as correct. Even in the earlier civil suit filed by plaintiff seeking relief of mandatory injunction, plaintiff was held to be owner of the property in dispute.

9. During the course of arguments, learned counsel for the appellants could not point out that the findings of the Courts below are based on misreading of evidence or wrong appreciation of evidence on record, calling for any interference.

10. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

July 13, 2016
Sachin M.