

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3131 of 2014 (O&M)
Date of Decision:1.2.2016

Ram Singh

---Appellant

vs.

Harnek Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Tejnder Pal Singh, Advocate
for the appellant

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the consistent findings recorded by the courts below whereby the suit filed by the appellant was dismissed by the trial court and the judgment and decree passed by the trial court has been affirmed in appeal.

The appellant-plaintiff filed a suit for permanent injunction restraining the respondents/defendants and their family members from interfering in the right to ingress and outgress and discharge of rainy and daily water of house of the appellant through 14 feet wide pucca gali

share-aam situated on the Eastern side of the house of the appellant, depicted in red colour in the site plan. Further prayer has been made for issuance of mandatory injunction directing the respondents to remove the cattle pegs installed alongwith wall of the house of the appellant and all other obstructions causing interference in free access of said gali share-aam by the appellant and other residents of the village. The plea of the appellant is that 14 feet wide pucca street in between the house of the appellant and the property of the respondents is rasta share-aam going from North to South and upto the Government primary school of the village. Two main gates of his house open in this gali/passage and Eastern length of the house of the plaintiff measuring 165 feet abuts the gali share-aam. The gali share-aam is meant for passage and discharge of rainy and daily water but the respondents with a view to cause inconvenience and harassment to the appellant and other villagers had installed several cattle pegs (khundas) in the said street.

The suit was contested by the other side raising preliminary objections as to its maintainability, locus standi of the appellant to file the suit, he being estopped by his act and conduct to file the suit and guilty of concealment of material facts. It is averred that there is a gali from South to North upto the house of Nirmal Singh and remaining land was left by Jawala Ram and Bhura Ram from their own land for ingress and outgress. The appellant opened a door towards Eastern side in the land of the respondents. An application was filed before SHO Shahzadpur against the appellant and a compromise was effected between the parties on 10.12.2004. The appellant was directed to pay a sum of Rs.10,000.- for

village gurudwara on account of opening door towards land of the respondents and a resolution was passed by the gram panchayat after getting the amount of Rs. 10,000/- deposited in the gurudwara. The appellant had main gate of his house on the North side. He intentionally closed the same after opening a gate in the gali in question.

The learned trial court dismissed the suit of the appellant by relying upon compromise deed Ex. D1 and resolution of the Gram Panchayat Ex. D2. The Court in appeal affirmed the findings recorded by the trial court in view of stand taken by the respondents and documents Ex. D1 and D2 proved by them.

Still feeling dissatisfied, the present appeal has been preferred by the unsuccessful plaintiff/appellant.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

Counsel for the appellant is not in a position to challenge the findings of the courts below based upon compromise deed Ex. D1 and the resolution passed by the gram panchayat Ex D2 wherein dispute between the parties to the gali in question was settled and the appellant was permitted to retain the gate opened towards the land of the respondents subject to deposit of Rs. 10,000/- in the village gurudwara as a measure of penalty. As per the resolution passed by the gram panchayat, it was decided that the appellant will have no share in the land in question and he will not discharge waste as well as rainy water in the land in question. Mohinder Singh, one of the witnesses examined by the appellant candidly admitted that the appellant deposited Rs. 10,000/- as penalty in pursuance of

compromise and a resolution was passed by the gram panchayat. The appellant himself admitted that there was a compromise between him and the residents of the village and further admitted his signatures on compromise Ex. D1. He has even admitted that resolution dated 10.12.2004 was passed by the gram panchayat and he has never challenged the same. Above all, he admitted that the land is owned and occupied by the respondents. In view of clear admission by the appellant in respect of documents Ex. D1 and D2 relied upon by the respondents/defendants, no fault can be found with the reasoning adopted by the courts below in non-suiting claim of the appellant. In this view of the matter, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the findings recorded by the courts below.

For the aforesaid reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

1.2.2016
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