

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARHSr. No. 103RSA-4603-2016 (O&M)Decided on : 07.12.2017

Kamal Kumar Sehgal and another

..... Appellants

VERSUS

Brij Mohan

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBALPresent: Mr.R.S.Bajaj, Advocate, for the appellants.

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DEEPAK SIBAL, J. (ORAL)

The respondent, who was the original plaintiff, filed a suit for permanent injunction seeking to restrain the appellants, who were the defendants in the suit, from interfering in the usage of a path marked as 'ABCD' in the site plan attached with the plaint.

The case set up by the respondent/plaintiff before the Trial Court was that Banarasi Dass was the owner of the house of which the suit property was a part. He had two sons Mukandi Lal and Janki Dass Sehgal. Mukandi Lal had one son namely Ram Nath whose son was Manohar Lal, who in turn had two sons Kamal Kumar and Jagdish Kumar. Manohar Lal alongwith Kamal Kumar Sehgal (appellant No.1) resided in the upper floor of the house and the remaining portion of the same was owned by Shivdev Kumar, the adopted son of Janki Dass Sehgal. There was a common path on the ground floor marked in the site plan as 'ABCD' on which there was also a staircase. On 26.02.1983 Manohar Lal, the father and predecessor-in-interest of appellant No.1, had filed a suit against Shivdev Kumar seeking therein permanent injunction for restraining Shivdev Kumar from using the afore-referred path 'ABCD'. The Sub-Judge Ist Class, Patiala through judgment and decree dated 26.08.1986 held that the passage 'ABCD' was joint property of the parties and both of them had the right to use the same. That order became final.

Through a sale deed dated 10.03.2004 the respondent purchased the portion of the

house owned by the aforesaid Shivdev Kumar and thus stepped into his foot steps. When the appellants started creating hindrances in the use of the passage 'ABCD', the respondent preferred the instant suit.

On being put to notice, the appellants appeared before the Trial Court and denied the case set up by the respondent. It was submitted that it was appellant No.1 who was the owner of the property alongwith the passage 'ABCD'; that the respondent had a clear-cut alternate approach to his property from the rear and thus the passage 'ABCD' was for the exclusive use of the appellants. The previous litigation between Manohar Lal and Shivdev Kumar was stated to have no relevance with the present controversy as the same was an arrangement within the same family.

The Trial Court after sifting the evidence led by both the parties decreed the respondent's suit. The appellants challenged such judgment and decree through an appeal filed before the Appellate Authority which was dismissed. It is in these circumstances that the appellants have knocked the doors of this Court through the present second appeal.

Learned counsel for the appellants while reiterating the submissions made before both the Courts below, submitted that it was appellant No.1 who was the exclusive owner of the passage 'ABCD' and that the respondent had no right of usage thereof. It was further submitted that the previous suit between Manohar Lal and Shivdev Kumar would have no bearing on the present litigation as the same was between two family members and apparently had been filed in pursuance to some family arrangement. It was thus submitted that the judgments and decrees passed by the Trial Court as also the Appellate Authority being perverse, were liable to be set aside.

The afore submissions have been considered but the same do not warrant a favourable consideration.

It is not disputed that Manohar Lal, the father of appellant No.1 had

filed a suit against Shivdev Kumar, the predecessor-in-interest of the respondent through which he had sought to restrain Shivdev Kumar from using the passage 'ABCD' which is the same passage in dispute in the present case. The suit was disposed of by the Sub-Judge Ist Class, Patiala on 26.08.1986, by holding as follows: -

“10. In the result and for the reasons stated above it is established that the passage/deori ABCD marked in plan Ex.P2 is the property which is jointly owned by both the parties and both of them have right to use the same. Defendants, therefore cannot obstruct the user of the plaintiff. Plaintiff has failed to prove that he is the exclusive owner of the property in dispute of the passage ABCD. The suit of the plaintiff is, therefore, decreed for permanent injunction restraining the defendant from creating obstruction in the use of the passage/deori in dispute by the plaintiff. Parties to bear their own costs. Decree sheet be prepared accordingly and file be consigned to the record room.”

A perusal of the afore-quoted findings recorded by the Sub-Judge Ist Class, Patiala makes it abundantly clear that the passage 'ABCD' was held to be jointly owned by the parties and resultantly for common use. Admittedly, that order became final. It is further not disputed that appellant No.1 inherited the property of Manohar Lal and the respondent purchased that part of the property which was owned by Shivdev Kumar through a sale deed dated 10.03.2004. Both the appellants as also the respondent thus stepped into the shoes of their respective predecessors-in-interest and that being so, the afore-quoted judgment and decree suffered by their respective predecessors-in-interest would also bind them especially when it is not disputed before this Court that there has been no other intervening circumstance between the passing of the afore-quoted order dated 26.08.1986 and the filing of the instant suit.

In view of the above, no question of law much less any substantial question of law arises in the present appeal warranting interference in the concurrent findings of fact returned by both the Trial Court as also the Appellate Court.

Dismissed.

07.12.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No