

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 102

RSA-4490-2015 (O&M)

Decided on : 04.12.2017

Jai Chand

..... Appellant

VERSUS

Varinder Kapoor and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Gurcharan Dass, Advocate, for the appellant.

. . .

DEEPAK SIBAL, J. (ORAL)

There is a delay of 817 days in re-filing of the present appeal. Such delay is sought to be condoned on the ground that the paper book of the appellant was misplaced in the office of the counsel due to renovation and whitewash in his office. The same was located after over 2 years and 3 months.

The explanation given is vague as no proof or details with regard to the alleged renovation or whitewash done in the office of the counsel for the appellant has been produced. The time taken for such renovation is also found missing. The explanation is thus not found to be satisfactory.

In spite of the above delay, learned counsel for the appellant was heard on merits.

The appellant, who was the original plaintiff, filed a suit seeking permanent injunction to restrain the respondents, who were the defendants therein from interfering in his ownership and possessory rights over a staircase in his shop. It was submitted that the respondents had no right or interest in the same. A decree of mandatory injunction was also prayed for to direct respondent No.4- Kirpal Singh to close the door Mark 'X' opening on to the staircase of the appellant.

The case set up by the appellant before the Trial Court was that

through a sale deed dated 31.05.1982 he had purchased a shop from one Darshana Rani in New Cycle Market, Gill Road, Ludhiana in which there already was a staircase. In the sale deed the staircase was to be under his exclusive ownership and possession. However, at one point of time he had permitted the respondents to use the afore-referred staircase to climb on to their property but later when a dispute arose he had asked the respondents to stop using the staircase and construct their own in the rear. The matter was reported to the police and a compromise was arrived at in pursuance to which the appellant was made to sign on a blank paper. Even after two months of the signing of the compromise the respondents did not construct their own staircase from the rear of their shop, leading to the filing of the suit.

The respondents appeared before the Trial Court and disputed the appellant's claim. It was submitted that the appellant was guilty of interpolation, alteration and forgery in the sale deed dated 31.05.1982 as it was mentioned therein that the staircase in question was for joint use of both the parties.

The Trial Court after sifting the evidence led by both the parties dismissed the appellant's suit and his appeal before the Appellate Court filed against such dismissal met the same fate as his suit. It is in these circumstances that the appellant has knocked the doors of this Court through the present second appeal.

Learned counsel for the appellant has drawn my attention to the sale deed dated 31.05.1982 through which the appellant had purchased the shop from one Darshana Rani. It was submitted that through the sale deed a shop measuring 12½ square yards was sold by Darshana Rani to the appellant. The staircase was situated within the 12½ square yards and since there was no reference in the sale deed that the staircase was to be used jointly by both the parties, the appellant acquired the exclusive ownership and possessory rights over the same.

Both the Trial Court as also the Appellate Court after perusing the

afore-referred sale deed dated 31.05.1982 have concurrently found that the appellant has committed the interpolations and alterations in the same, which are as under: -

- “I) The word “Banya hai” has been erased and in its place the word “Porhian” has been substituted.
- II) The word “Sanjhi” has been erased and its place the word “2 ½” has been substituted.
- III) The word “7” has been interpolated as “9” by erasing word “7”.
- IV) In the plan annexed to the sale deed, the word “common” has been erased and in its place the word “in” has been substituted.
- V) The word “7'.8” has been interpolated and altered as “9'.8.”

Both the Trial Court as also the Appellate Court have found that the above interpolations and alterations have been made by the appellant. He had erased and made changes/substitutions in those portions of the sale deed which provided that the staircase being sold to the appellant was for joint use and this was done to project himself to be the exclusive owner and possessor of the same.

The afore-referred sale deed dated 31.05.1982 has been perused by this Court as well. Interpolations and alterations are found therein at the places where the Trial Court as also the Appellate Court have found them. Such interpolations and alterations have not been initialed by the parties. The stand taken by the appellant thus cannot be accepted.

No other argument was raised.

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.

The appeal is dismissed on the ground of delay as also on merits.

04.12.2017
shamsher

[DEEPAK SIBAL]
JUDGE

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