

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1954 of 2014 (O&M)
Date of decision: 04.05.2017

Pal Singh and another

... Appellants

Vs.

Kehar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.S. Sullar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for mandatory injunction filed by the plaintiff, directing the defendants to close the aperture of door shown at point 'X' and two windows shown as 'W1' and 'W2' in the wall which was shown with letters CB in the site plan Ex.P1 and remove the temporary wall shown with letters EFG shown in the site plan, was decreed by the learned trial Court, vide its impugned judgment and decree dated 09.10.2010 and first appeal of the defendants was also dismissed by the learned first appellate Court, vide impugned judgment and decree dated 06.08.2013.

Brief facts of the case, as noticed by learned first appellate Court in

para 2 of its impugned judgment, are that plaintiff along with his other family members were having agricultural land comprised in Khewat/Khatoni No.20 min/26 min bearing Khasra No.63 measuring 1K-3M situated in Village Kapuri, Tehsil and District Ambala as per jamabandi for the year 1998-99. Plaintiff along with his brother Sadhu Ram and Stapal etc. were having land in abadi deh bounded as under: -

North: Rasta 10' wide and land of Chandan

South: Property of Bishna Ram and others

East: House of Pal Singh

West: Land bearing Khasra No.63 of the plaintiff, Satpal and Sadhu Ram etc.

It was averred that the plaintiff had purchased the abadi deh land measuring 42.6 sq. yards from his real brother Sadhu Ram vide registered sale deed dated 06.08.2003 for a consideration of Rs.4,000/- which is bounded as under: -

North: Land of Chandan.....8'

South: Wall of house of Bishna Ram and others.....8'

East: Residential house of Pal Singh. Des Raj and Jai Ram48'

West: Land of Kehar Singh48'

It was further averred that the defendants were having their house in the abadi and back portion of their house adjoined the property of the plaintiff and were having their ingress and outgress from the other sides as shown in the site plan. It was further averred that in the intervening night of 27.09.2003 and 28.09.2003, the defendants had constructed a wall marked as EFG with old bricks of their fallen house and opened aperture of door at point

'X' and two windows 'W1' and 'W2' in the back wall CD of their house as shown in red colour in the site plan with intention to grab the property of the plaintiff and also encroached upon the portion EFCD and raised wall with old bricks to defeat the legal rights of ownership of the plaintiff. It was further averred that the plaintiff moved an application to the police, but the police authorities directed the parties to get the matter settled through civil Court. Plaintiff made several requests to the defendants not to take law in their hands, but they were adamant and refused to do the needful.

Upon service, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to decree for mandatory injunction as prayed for? OPP.
2. Whether suit is not maintainable? OPD
3. Whether plaintiff has no locus standi to file the present suit? OPD.
4. Relief.

In order to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that the plaintiff has duly proved his case, by leading cogent evidence. Accordingly, suit of the plaintiff was decreed by the learned trial Court, vide its impugned judgment and decree dated 09.10.2010. Feeling aggrieved, defendants filed their first appeal, which

also came to be dismissed by learned first appellate Court, vide its impugned judgment and decree dated 06.08.2013. Hence this regular second appeal at the hands of the defendants.

Heard learned counsel for the appellants.

A combined reading of both the impugned judgments and decrees rendered by the learned Courts below, recording their concurrent findings of facts, will make it crystal clear that the plaintiff produced voluminous documentary as well as oral evidence, including site plan Ex.P1, photographs Ex.P2 to Ex.P10, ownership of the plaintiff was also duly proved vide sale deed dated 06.08.2003 Ex.P12, copy of relevant jamabandi was produced as Ex.P13, copies of khasra girdawari and aksh-sajra were proved as Ex.P14 and Ex.P15.

Report of Local Commissioner also came in favour of the plaintiff vide Ex.P16 and the defendants-appellants did not file any objection to the report of Local Commissioner. Defendants were also found violating the Court orders, while raising construction during pendency of the suit, despite there being a restraint order against them. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned judgment and decree and the suit of the plaintiff was rightly decreed.

Similarly, before arriving at a judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in para 10 of its impugned judgment, which deserve to be noticed here, read as under: -

*“The learned counsel for the appellants has contended that the suit for mandatory injunction directing the defendants to close the aperture and to remove the wall is not maintainable without seeking the consequential relief of possession of the land in possession of the appellants as is proved from the statement of Kehar Singh, PW4. In support of this contention, he has relied upon **Nitin Gunwant Shah Versus Indian Bank & ors., 2012 (4) CCC 648 (SC), Ram Saran and another Versus Smt. Ganga Devi, AIR 1972 SC 2685 and Mohinder Singh Versus Shamsher Singh, 2010 (2) RCR (Civil) 505.** It is clear from the perusal of photograph as Ex.P2 that the defendants had raised temporary wall upto the height of approximately 2 feet and the plaintiff had sought injunction restraining the defendants from raising wall marked as EFG as shown in the site plan as Ex.P1 and the learned lower Court vide order dated 10.10.2003 had ordered the parties to maintain status quo qua construction. The learned counsel for the respondent has contended that as the defendants/appellants did not obey the injunction order passed against them by the learned lower Court, a contempt petition was filed in the competent Court of law and the same is pending. Further, it is clear from the report of Local Commissioner dated 02.12.2003 as Ex.P16 that wall marked by letters EFG as shown in the site plan as Ex.P1 relief upon by the plaintiff is freshly constructed upto the height of about 5-6 feet, meaning thereby, that by no stretch of imagination, it can be said that simplicitor suit for mandatory injunction without*

*seeking relief of possession cannot be filed because as wall marked by letters EFG has been raised during the pendency of the suit, therefore, in the considered opinion of this Court, suit for mandatory injunction even without seeking consequential relief of possession is maintainable. Reference can be made to **Kulwant Singh and another Versus Jodh Singh and others, 2010 (3) CCC 257 (P&H)**. The contention of learned counsel for the appellants that as the land in suit is not identifiable; therefore, suit of the plaintiff ought to have been dismissed by the learned lower Court is also unacceptable, since from the site plan as Ex.P1, report of Local Commissioner as Ex.P16 and photographs as Ex.P2 to Ex.P10, the land in suit stands identified and the learned counsel for the appellants has failed to convince this Court that why no objection to the report of Local Commissioner or the counter photographs were ever brought on record to substantiate their claim. Even the site plan marked as 'A' relied upon by the appellants has not been proved on record as the author of the same has not been examined. The contention of learned counsel for the appellants that sale deed as Ex.P12 alleged to be executed by Sadhu Ram in favour of his real brother Kehar Singh, the plaintiff is merely a sham transaction is also devoid of any force, because admittedly the sale deed as Ex.P12 has not been challenged by the defendants in any competent Court of law and the same has been duly proved on record from the testimony of Sadhu Ram, PW5 and Kuldeep Singh, PW3. Moreover, it is settled law that registered*

*sale deed carries a presumption that the transaction is genuine one. Reference can be made to **Vimal Chand Ghevarchand Jain & ors. Versus Ramakant Eknath Jajoo 2009 (3) CCC 220 (SC).***”

The learned first appellate Court recorded a positive finding that sale deed Ex.P12 in favour of the plaintiff had never been under challenge at the hands of the defendants-appellants. Once the ownership of the plaintiff was not in dispute, defendants-appellants had no right to raise any construction on the land owned by the plaintiff. Defendants also tried to violate the Court orders, misconducting themselves to such an extent that they raised some construction during pendency of the suit, in spite of the fact that there was a restraint order against them passed by the learned trial Court. In this view of the matter, it can be safely concluded that the appellants-defendants were not bonafide litigants. Such litigants are also not entitled for any kind of sympathy from the Court as well, therefore, the impugned judgments and decrees passed by the learned Courts below deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

04.05.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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