

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

RSA No.260 of 2014.

Date of Decision: 24.01.2017.

Bala Rani and others

....Appellants.

VERSUS

Rajesh Kumar and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.S. Budhwar, Advocate for the appellants.

SNEH PRASHAR, J.

This was Regular Second Appeal filed by appellants Bala Rani and others-legal heirs of defendant No.2 Sushil Kumar (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 05.09.2013 passed by learned Additional District Judge, Kurukshetra whereby the appeal filed by the appellants challenging the judgment and decree dated 28.10.2010 passed in Civil Suit No.321 of 2008 by learned Civil Judge (Junior Division), Kurukshetra, decreeing the suit for mandatory injunction with consequential relief of permanent injunction instituted by respondents No.1 to 6-plaintiffs Rajesh Kumar and others (hereinafter referred to as “respondents No.1 to 6-plaintiffs”), was dismissed.

Brief facts are that respondents No.1 to 6-plaintiffs claiming to be owners in possession of Houses No.911, 910, 891, 907, 906 and 890 in Sector-7, Kurukshetra alleged that there was a 'Katcha band' which closed at the end of Plots No.912 and 887 as shown with red colour in the site plan

annexed with the plaint and in the plan circulated by Haryana Urban Development Authority (for short, "HUDA"). Sushil Kumar-defendant No.2 (now represented by the appellants) had illegally constructed a wall on the land of HUDA without obtaining permission and was also bent upon to open a door in his wall by breaking the katcha band owned by HUDA which would cause irreparable loss and injury to them (plaintiffs).

The suit was contested by the appellants-defendant No.2 and respondent No.7-defendant No.1 HUDA. Although defendant No.1-HUDA contested the suit on the ground of jurisdiction and maintainability but it admitted that appellants-defendant No.2 had illegally constructed a wall on the HUDA land and have further installed a gate in the wall which is illegal. Defendant No.2 was said to be resident of village Ratgal having no right of egress or ingress in the property of HUDA.

In the written statement, appellants-defendant No.2 submitted that the suit had been filed by Rajesh Kumar-plaintiff No.1 due to personal enmity with him and the other plaintiffs, in fact, have no interest in the suit. He denied existence of any 'katcha band'-street and alleged that it is plaintiff No.1 who has illegally occupied portion of the street in front of his house. He further pleaded that he had purchased a plot measuring 124.66 square yards situated within the Abadi Deh of village Ratgal, Tehsil Thanesar for a valuable consideration and had constructed a house on the same. The boundary wall and gate of the house are in existence on his land. Neither HUDA nor the plaintiffs have any concern with the construction of his house.

On the rival contentions of the parties, following issues were

1. Whether the plaintiffs are entitled to a decree for mandatory/ permanent injunction as prayed for on the grounds mentioned in the plaint?OPP
2. Whether the plaintiffs have no locus standi to file and maintain the present suit?OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the civil court has no jurisdiction to entertain and try the present suit? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of the parties? OPD
6. Whether the plaintiffs have no cause of action to file and maintain the present suit? OPD
7. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court decreed the suit vide judgment and decree dated 28.10.2010 and passed a decree for mandatory injunction directing defendant No.1 to demolish and remove the illegal wall as well as gate in dispute so constructed and installed by defendant No.2 over the land of HUDA by encroaching upon the same.

The appeal filed by defendant No.2-appellants was dismissed by learned first appellate Court vide judgment and decree dated 05.09.2013.

Still dissatisfied, the appellants have filed the instant Regular Second Appeal.

The submissions made by Mr. R.S. Budhwar, learned counsel representing the appellants have been considered and record perused.

Learned counsel for the appellants argued that the wall and the

of their house. The plot, on which the house was constructed, was purchased vide registered sale deed dated 31.01.2001 (Ex.D3). The respondents-plaintiffs or HUDA did not seek demarcation of the land to support their plea that the alleged wall constructed by the appellants existed on HUDA land. The appellants have a right to use their property and the wall causes no hindrance to either of the plaintiffs and is in existence since the year 2001. The findings of learned trial Court as well as of the first appellate Court that the appellants had encroached upon the land of HUDA have no base to stand on.

There appears no force in the argument of leaned counsel. During trial of the case, HUDA examined Rajender Singh, its Junior Engineer who stated that the disputed wall had been constructed by the appellants on the land of HUDA. It was admitted case of the appellants that their house is situated in the abadi deh of village Ratgal which means that the front of their house as well as egress and ingress to their house is from the side of the abadi deh of the village. No reason could be explained by them for installing a gate in the disputed rear wall towards the house of the plaintiffs.

Moreso the plot, on which the house stands constructed by the appellants was stated to be 124.66 square yards as was also mentioned in the registered sale deed (Ex.D3). If at all the disputed wall was on the plot purchased by the appellants, he should have produced a site plan showing the dimensions of his house to support his contention that the disputed wall and gate were constructed on the land owned by him. This Court vide order dated 20th May, 2016 had asked the appellants to produce the

however the appellants failed to produce the required site plan. In the said circumstances, there appears no ground for this Court to interfere in the concurrent findings of fact recorded by learned trial Court as well as first appellate Court that the gate in question has been installed by the appellants on the land of HUDA towards the houses of the plaintiffs.

Thus, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

24.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**