

RSA No. 5922 of 2015

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

**RSA No. 5922 of 2015
Date of Decision: 25.9.2017**

Ram Phal

.....Appellant

Vs.

Kishori son of Bhagwan and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. N.D. Achint, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 2.4.2014 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 1.4.2015 upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that the case plaintiff was owner/co-sharer in possession of the land comprising of Khewat No.607,

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Khata No.658, Rect. No.14, Killa No.19/2/1(2-13), 20/1(5-0), total measuring 7 Kanals 13 Marlas, situated in the revenue estate of village Kherki Daula, Tehsil Manesar, District Gurgaon, with his brothers, namely, Balram and Mangal. Plaintiff and his brothers constructed their houses in the aforesaid land more than 30 years back and had carved out a private passage towards northern side from East to West, which was part and parcel of their aforementioned land. There was a gate on the western side of land touching National Highway No.8, owned and possessed by the plaintiff and his brothers for ingress and egress to their house.

It was alleged that land of Gram Panchayat, Kherki Daula, exists on the western side of the suit land, which comprises Khewat No.630, Khata No.685, Rect. No.15 Killa No.16, measuring 3 Kanals 17 Marlas. It was further alleged that this land was encroached by the defendants for constructing their house having their rasta towards western side of this land and they were threatening to interfere in possession of the plaintiff and his brothers over the northern side of the suit property. Hence, the suit. Finally, the plaintiff prayed that a decree of permanent injunction restraining the defendants from interfering in possession of the plaintiff over the northern side of the suit property in any manner, whatsoever, be passed in favour of the plaintiff and against the defendants with costs.

Upon notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is owner/co-sharer in possession of suit land as mentioned in para No.1 of the plaint ? OPP.

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2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for ? OPP.
3. Whether the plaintiff has no cause of action ? OPD.
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD.
5. Whether the plaintiff is estopped from filing the present suit ? OPD.
6. Whether the suit of the plaintiff is not maintainable ? OPD.
7. Whether the suit is barred by limitation ? OPD.
8. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has miserably failed to prove his case. Accordingly, his suit for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 2.4.2014. Feeling aggrieved, plaintiff filed his first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 1.4.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that plaintiff-appellant had been pursuing two parallel litigations at the same time. One was the present suit for permanent injunction filed by him by way of Civil Suit No. 97-A instituted on 3.4.2010. Second wholly unwarranted litigation, which was initiated by the plaintiff, was civil suit No. 490 instituted on 7.4.2010. i.e. within one week after filing the suit for permanent injunction. Both these civil suits were pursued by the plaintiff qua same suit property and same cause of

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action but against different defendants and before different courts. A perusal of memorandum of parties of both the suits would show that in the first suit, plaintiff kept Municipal Corporation out of the picture and in the second suit filed against Municipal Corporation, plaintiff kept present respondents-defendants in dark. Neither there was any occasion for the plaintiff to do so, nor it was the requirement of law to file these two parallel suits, because pursuing two civil suits claiming same relief by the same plaintiff would amount to abuse of process of law.

When confronted with this factual aspect of the matter, which is a matter of record, learned counsel for the appellant had no answer and rightly so, there being none available to the appellant. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 14 and 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“.....In the instant case, undoubtedly, the ownership and possession of the plaintiff over the suit land comprising of Khewat No.607 Khata No.658 Rect. No.14, Killa 19/2/1 (2-13), 20/1(5-0) total measuring 7 Kanals 13 Marlas, situated in revenue estate of village Kherki Daula, Tehsil Manesar, District Gurgaon, alongwith his brothers Balram and Mangal, is not disputed. Only dispute is, in respect of installation of a gate on the Northern side of the land which is adjoining to the land of

the Municipal Corporation, Gurgaon, earlier of Gram Panchayat. The case of the plaintiff is that he has erected the gate on Northern side over his own land, whereas, case of the defendants is that the plaintiff has encroached upon the land of the Municipal Corporation, which had resulted into removal of the gate by Municipal Corporation on defendants' complaint, but re-constructed by the plaintiff. Since, in the instant case, onus is upon the plaintiff to prove that the gate in question exists in his own land, he was to prove this factum by leading cogent evidence but the same is missing in the instant case. Beside self serving statement of the plaintiff to show that gate in question existed in his own land, he has referred to the site plan Mark A, which cannot be read in evidence being not proved by the person, who had prepared it by visiting the spot. There is also no report of any revenue authority in the form of demarcation to prove that the gate in question is not erected in Government's land but in the land of the plaintiff situated in Killa Nos.19/2/1 and 20/1. Undoubtedly, the defendants have no right to interfere in the peaceful possession of the property owned and possessed by plaintiff and also to object to the use of plaintiff of his property in the manner he wishes by raising construction thereon subject to By-laws of Municipal Corporation but certainly the defendants have right to object if the plaintiff exceed his area of ownership and possession to encroach upon the land of the defendants or even of the Panchayat subsequently vested into Municipal Corporation. Thus, the defendants have all the right to object to the construction, if any, carried out by the plaintiff over the Corporation's land or over his land in violation of By-laws of the Municipal Corporation, which govern that controlled area. Since, in the instant case, the plaintiff has not succeeded to prove that the construction which he intends to protect through the present suit, exists in his area, no injunction could be granted to him on the vague plea to restrain the defendants

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from interfering in possession of the plaintiff over the Northern side of the property detailed in para No.1 of the plaint, in any manner, whatsoever. For the sake of repetition, it is observed that the plaintiff has sought injunction in respect of his property situated on the Northern side of the suit property detailed in para No.1 of the plaint, but there is no proof that the property in possession of the plaintiff on Northern side of the suit property, how much of it belongs to the plaintiff and how much falls in the area of Municipal Corporation. Thus, the case of the plaintiff lacks substance.”

Filing of second suit, at the hands of same plaintiff-appellant and adding relief of permanent and mandatory injunction as well, would also show that findings recorded by the learned trial court at page 35 of the paper book, in para 12 of the impugned judgment dated 2.4.2014, were factually correct and legally justified to the effect that door installed by the appellant in the Municipal land had been demolished, because of which, he sought a relief of mandatory injunction by way of second suit instituted on 7.4.2010. In fact, a combined reading of both the impugned judgments as well as judgment dated 17.3.2015 (Annexure A-2), passed by the learned trial court in second suit for permanent injunction and mandatory injunction instituted on 7.4.2010 by the same plaintiff, would show that appellant was trying to play smart by misusing the process of law and that too glaringly.

It is also pertinent to note here that plaintiff was being represented by the same learned counsel in both the abovesaid litigation. Plaintiff kept conveniently silent regarding his second suit for permanent injunction which was being pursued by him. Similarly, fact that the learned trial court had dismissed the suit for permanent injunction filed by the plaintiff was also not brought to the notice of the court. It does not appeal to

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reason as to why plaintiff-appellant was pursuing unwarranted and avoidable litigations.

In fact, in the circumstances of the case, second suit filed by the plaintiff was clearly barred under the relevant provisions of law contained in Order II Rule 2 CPC. The second suit would be barred by the principle of res judicata as well. Even if the defendants were different in both the civil suits, still plaintiff cannot be permitted to turn around and misuse process of law. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below in their respective impugned judgments and decrees which deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments 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 a regular second appeal at the hands of this Court, while exercising its 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been

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made out.

Since the appellant has not been found to be a bonafide litigant for the reasons recorded in the foregoing paragraphs, his application for additional evidence under Order VI Rule 27 CPC by way of CM No. 14742-C-2015 has also not been found worth acceptance and the same is hereby dismissed.

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

25.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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