

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 104

RSA-287-2017 (O&M)

Decided on : 27.07.2017

Banta Ram

..... Appellant

VERSUS

Smt. Anjula

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.R.K.Arya, Advocate, for the appellant.

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DEEPAK SIBAL, J. (ORAL)

There is a delay of 466 days in filing of the present appeal. Condonation of delay is sought on the ground that the appellant being of old age and ill health could not contact his counsel nor his counsel informed him about the date of his case. Neither the age of the appellant has been revealed nor is it disclosed as to what ailment he is suffering from. Even otherwise, in paragraph 3 of the application seeking condonation of delay it is stated that the appellant came to know about the judgments and decrees dated 13.07.2015 and 08.11.2011, passed by the Appellate Court and the Trial Court respectively, only on 10.12.2016. Such pleaded fact is false as against the judgment and decree dated 08.11.2011 passed by the Trial Court, the appellant had preferred an appeal before the Appellate Court on 12.11.2012.

In spite of the above, learned counsel for the appellant has been heard on merits.

The appellant, who was the plaintiff before the Trial Court, filed a suit for permanent injunction seeking to restrain the defendant-respondent from interfering in his possession over his house and from carving out any passage by demolishing any part of his house built over land bearing Khewat No.195, Khatoni

No.284, Khasra No.19R18/3/1, total measuring 17 marlas, in Village Parihal

Hadbast No.184, Tehsil Pathankot, District Gurdaspur (for short “the suit land”).

The case set up by the appellant was that he had a house, a cattle shed and two shops upon the suit land for the last 20 years. He was recorded in possession of the same as *Bila Lagaan Bavaza Tasabar Malkiat Gair Mumkin Abadi*. The respondent, who was stated to be the owner in possession of land on the eastern side of the suit land was alleged to have manipulated the *Shajra* (plan made by the revenue authorities) and on the basis of the same was alleged to be illegally claiming existence of a passage through the suit land. Fearing demolition of his house at the behest of the respondent who was seeking the carving out of the above referred passage, through the suit land, the appellant had instituted the present suit for the afore-referred reliefs.

The respondent, upon appearance before the Trial Court, filed a written statement seeking dismissal of the suit on the ground that the appellant, under the garb of the suit wanted to encroach upon a 2 karam wide passage which was duly reflected in the revenue records and that such passage was the only way for ingress and egress from and to his plot. A counter-claim was also filed by the respondent seeking to restrain the appellant from forcibly encroaching upon the above passage as mentioned in the headnote of the counter-claim.

After considering the pleas raised by either side and sifting of the led evidence, the Trial Court dismissed the suit of the appellant and the appeal against such dismissal at the instance of the appellant met the same fate. It is in these circumstances that the present second appeal has been preferred.

The only argument raised by learned counsel for the appellant is that once both the Trial Court as also the Appellate Court had concurrently accepted the appellant's possession over the suit land, the injunction prayed for by the appellant should have been granted.

On consideration of the above submission, I find no merit in the same. It is true that the possession of the appellant was established by him over

the suit land and the same was also found to have been reflected in the Jamabandies for the year 1993-94 (Ex.P11) and 1998-99 (Ex.P10) as also in the Khasra Girdawaries (Ex.P12 to Ex.P14). However, the appellant led no evidence to prove his plea that there was no passage as shown in the *Shajra*. Further, no evidence whatsoever was led by the appellant to prove as to how, in what manner and in connivance with whom the respondent had manipulated the *Shajra* in which the passage was clearly reflected. The witnesses examined by the appellant merely proved the appellant's possession over the suit land but did not lend any support to his case that there did not exist any passage as shown in the *Shajra*. The site plan which was produced by the appellant to counter the *Shajra* when weighed with a certified copy of the *Shajra* which is a plan made by the revenue authorities and is per se admissible as evidence having attached to it the presumption of truth had to give way in favour of the *Shajra* especially when the certified copy of the *Shajra* was not only produced but also proved by the respondent. The demarcation report Ex.PX relied upon by the appellant would also not support his case as the same pertains to Khasra No.19R/18/1 and 19R18/3/1 whereas the passage is shown to exist between Khasra No.19R18/3/1 and 19R18/3/2. Even otherwise, such demarcation was indisputably done behind the back of the respondent as thus not binding upon him. The Jamabandies and Khasra Girdawaries produced by the appellant also only proved his possession over the suit land and nowhere denied the existence of the afore-referred passage.

Both the Trial Court as also the Appellate Court, after considering the above evidence, have concurrently concluded that the appellant remained unsuccessful in proving his case that there was no passage which was the only access to and from the respondent's plot. On the other hand, the respondent duly proved the existence of the same as a result of which, her counter-claim restraining the appellant from forcibly occupying and encroaching upon the passage was allowed. Nothing could be pointed out by learned counsel for the appellant to

persuade me to take a different view.

In view of the above, both on the ground of delay of 466 days in filing of the present appeal as also on merit, the appeal is ordered to be dismissed.

No costs.

27.07.2017
shamsher

[DEEPAK SIBAL]

JUDGE

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