

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3465 of 2017
Date of Decision: 07.07.2017

Satish Kumar and another

.....Appellant

Vs.

Arun Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.K.S.Malik-I, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

CM No.8363-C of 2017

For the reasons stated in the application, delay of 37 days in re-filing the appeal is condoned.

Application stands disposed of.

CM No.8364-C of 2017

For the reasons stated in the application, delay of 03 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

This appeal has been filed against the impugned judgment dated 21.07.2015 passed by learned Civil Judge (Jr.Divn.) Rohtak and judgment and decree dated 10.01.2017 passed by learned Additional District Judge, Rohtak, whereby, suit filed by respondent/plaintiff for permanent/injunction has been decreed by the Courts below.

A perusal of the judgment passed shows that plaintiff had led evidence in the form of two sale deed Ex.P-1 bearing No.6698 dated 03.12.2012 of 14 Sq. Yard and supplementary sale deed bearing document No.7573 dated 24.12.2012 Ex.P-2. In supplementary sale deed, it has been mentioned that the suit property i.e. plot No.8 area measuring 14 Sq. Yards was sold to plaintiff but it was not entered in the registered sale deed that it was a private passage. The above said two sale deeds has not been

challenged by the defendant. The abovesaid property had been purchased by the plaintiff from namely Rakesh Kumar son of Ram Bhagat and Ramphal. They have also placed on record the sale deeds of the adjoining property Ex.P-4 bearing No.4866 dated 28.11.1993 and Ex.P-5 sale deed bearing No.9142 dated 28.11.2011. In his cross-examination PW1 Arun Kumar (plaintiff) had admitted that in the said passage defendant No.2 was having his iron gate at point H in the site plan Ex.DX.

The stands taken by the respondents that DW1 Jaipal and DW2 Satish Kumar had deposed that suit property was a public road/Gali which was used by the defendants since the purchase of their plot. The sale deed of the above said Gali was not legal. They have filed photographs of the suit property Ex.D1 to Ex.D4. After going through the photographs, it was revealed that it was closed space and it was not open on both sides. The defendants had failed to led any evidence on record to prove that suit property was belonging to Municipal Corporation and it was a public passage, the issue No.1 was decided in favour of plaintiff and suit for permanent injunction was decreed in favour of plaintiff to the effect that defendant No.1 was restrained to interfere into the possession of plaintiff over the suit property i.e. private passage in any manner. The para 10 of the judgment passed, it has been observed that the suit property was a private Gali measuring 14 Sq. Yards and the same was purchased vide sale deed bearing No.6698 dated 03.12.2012 in his favour but inadvertently the said fact was not mentioned in the said sale deed and a supplementary sale deed vide document No.7573 dated 24.12.2012 was executed and the same was duly registered and it was clearly mentioned therein that defendant No.1 had no right, title or authority in any manner upon the suit property. Plaintiff had his residential house just adjacent to the suit property towards eastern side of the suit property and used the suit property as private passage and he had also constructed his own wall around the suit property. Appellants/defendants Satish Kumar and Yashpal were claimant that the property in dispute had been shown as “gali kucha band” in sale deeds Ex.D5 and D6. The said sale deeds were dated 31.10.2007 and 26.04.2006 i.e. much after the execution of sale deed Ex.P3 dated 04.11.1993 executed by Bimla in favour of Surrender in respect of property in dispute. Besides,

when there was a specific averment of the defendants that the property in dispute was a public passage, the onus to prove such fact was on the defendants, but no evidence had been led on the file to show that the property in dispute was being maintained by Municipal Council Rohtak. Even otherwise, no record had been got produced on the file from the Municipal Cuncil, Rohtak to prove the said fact. Thus, in the absence of any such evidence on the file, both the Courts below had rightly decreed the suit in favour of plaintiff/respondent-Arun Kumar.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present regular second appeal stands dismissed.

(RITU BAHRI)
JUDGE

07.07.2017
anil

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