

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3560 of 2017 (O&M)
Date of Order:8th August, 2017

Vidya Devi

..Appellant

Versus

Dharambir and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Gandhi, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.8582-C of 2017

Prayer in this application is for condonation of delay of 14 days in refiling the appeal.

The contents of the application are supported by an affidavit, For the reasons given in the application, the application is allowed and delay of 14 days in re-filing the appeal is condoned.

RSA No.3560 of 2017

Defendant is in regular second appeal, against concurrent findings of fact arrived at by the Courts below.

Plaintiffs had fled a suit claiming decree for permanent injunction restraining the defendant from installing a gate at point "AB" shown in the site plan. Plaintiffs had further prayed for grant of a decree for mandatory injunction, directing the defendant to remove the gate from the spot if it is installed during the pendency of the suit.

Plaintiffs claim that they are residents of village Kalanuar Khurd from the time of their ancestors and earn their livelihood by making utensils with Mud. They are residing in plot no.1236. There is a house of

late Rohtas son of Amar Singh and Vidhya Devi. A street abuts the property in question. The plaintiffs that the defendant wants to install a gate at the point shown in the site plan.

Defendant contested the suit and stated that the gate is already installed at the spot for the last 40 to 50 years.

During the pendency of the suit, a Local Commissioner was appointed to visit the site. Local Commissioner visited the suit on 13.09.2013 and found that new gate has been installed.

Learned trial court after appreciating the evidence, decreed the suit filed by the plaintiffs and directed removal of gate at point "AB" within 30 days from passing of the judgment. Trial Court further restrained the defendant from installing gate at point 'AB'.

Defendant-appellant filed the first appeal.

Learned first appellate court after re-appreciating the evidence available on the file, dismissed the appeal filed by the defendant-appellant.

Learned counsel for the appellant has referred to the report of the Local Commissioner. Counsel for the appellant has further referred to application marked "H" submitted by one Phhol Pati. Learned counsel for the appellant has further referred to another application again submitted by Phool Pati. Phool Pati is mother of the appellant. Counsel for the appellant while referring to these documents has submitted that the appellant had submitted applications to the police authorities much before the filing of the suit and, therefore, the stand of the plaintiffs that new gate is being installed is not borne out from the record.

Learned counsel for the appellant has further referred to the statement of Local Commissioner, who has been examined as PW4, wherein

she admitted that she is not an expert and not qualified to assess the age of the construction.

I have considered the arguments of learned counsel for the appellant. However, I am unable to agree.

The report submitted by the Local Commissioner is clear. It has been found by the Local Commissioner that a new gate had been installed. The Local Commissioner while being examined as PW4 reiterated the fact that the gate installed was new one. A reading of the report of the Local Commissioner would show that the wall was found to be old but a new iron gate had been installed. The Local Commissioner also produced photographs to clearly prove that the gate has been installed by breaking the wall and cement has been used to install the gate, whereas the old wall is constructed with Mud.

In view of the concurrent findings of fact arrived at by the Courts below, I do not find any reason to interfere with the judgments passed by the courts below. Counsel for the appellant has not been able to point out any substantial question of law or any ground which may fall within the scope of Section 41 of the Punjab Courts Act, 1918.

Therefore, the appeal is ordered to be dismissed.

8th August, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No