

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

RSA No.4585 of 2003 (O&M)

Date of decision : 04.12.2018

Ram Dass

...Appellant

Versus

Ramanand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate for the appellant.

Mr. Jai Vir Yadav, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings fact arrived at by both the Courts below.

No doubt, the trial Court committed the procedural error in not framing the issues required to be framed under Order 14 of CPC on completion of the pleadings, however, the question which needs consideration is whether the judgments passed by both the Courts below on appreciation of the evidence should be set aside only on the ground that there was a procedural error, even if the defendants have failed to show and prove any prejudice caused.

On 12.09.2005, after noticing the contention raised by the learned counsel for the appellant, the appeal was admitted. The contention as raised on 04.02.2005 noticed in the order dated 12.09.2005, is extracted

as under:-

“Learned counsel for the appellant has submitted that the issues in the case were framed only during the course of arguments and no issues were framed before recording the evidence. It has further been submitted that proper issues had not been framed and that in fact no issue was framed with regard to oral exchange.”

The defendants have examined four witnesses in oral evidence and produced seven documents in the documentary evidence.

Learned First Appellate Court has found that the defendants have failed to prove any prejudice caused. Either before the First Appellate Court or before this Court, no application has been filed by the defendants submitting that the defendants want to lead any further evidence.

Dispute in the present case is with regard to a small piece of land which is being used by the plaintiff as a passage. Learned trial Court appointed a Local Commissioner who after notice to the parties visited the site and submitted a report Ex.PW3/3 concluding that the plaintiff has no other passage apart from the disputed passage. It has further been concluded that the construction by the neighbours have been raised in a manner clearly depicting that this passage has been left for use by the plaintiff as also residents of surrounding houses. Local Commissioner has found that various persons have opened their doors and windows and are also discharging rain water from the roof in the disputed passage. The aforesaid Local Commissioner has also appeared in evidence but the defendants could not impeach either the correctness of his report or his statement on oath in cross-examination. Still further, Ex.PW4/1 is a decision of the Gram

Panchayat wherein in the presence of the Sarpanch and 18 others, it has been recorded that this passage is continuing since 1971-72 and an effort has been made by defendant No.1 to cause obstruction and in spite of the request made, he is not agreeing to keep the passage opened as was continuing for many years.

In view of the aforesaid, this Court prefers to go by substantive justice rather than going into the procedural error. Although, learned counsel for the appellant made sincere attempt, however, could not draw attention of the Court to any substantive error in the judgment passed by both the Courts below.

Regular Second Appeal is dismissed.

04.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No