

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

**RSA No.4733 of 2010 (O&M)
Date of decision: May 24, 2018**

Roshan Lal and another

...Appellants

Versus

Rattan Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.K.Gupta, Advocate
for the appellants.

Mr.Sanjay Mittal, Advocate
for the respondents.

INDERJIT SINGH, J.

Appellants Roshan Lal and Hukam Chand have filed this regular second appeal against respondents Rattan Lal and Anguri Devi, challenging the judgment and decree dated 23.01.2008 passed by learned Civil Judge (Junior Division), Narnaul, whereby suit filed by the plaintiffs-appellants for permanent injunction was dismissed and judgment and decree dated 28.07.2010 passed by learned District Judge, Narnaul, vide which the appeal filed by the appellant was also dismissed.

Notice of motion was issued. Learned counsel for respondents appeared and contested the appeal.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that plaintiffs-appellants Roshan Lal and Hukam Chand filed a suit against defendant Rattan Lal and Anguri Devi

for permanent injunction restraining the defendants from interfering,

demolishing, raising construction over the properties mentioned in the head note of the plaint and if defendants succeed in raising the construction/demolishing the property in question, then they be directed to remove the same on the basis of oral as well as documentary evidence.

The case of plaintiffs is that plaintiff No.1 is tenant over the property mentioned in para No.1 of the plaint under plaintiff No.2 and others continuously and plaintiff No.2, Anshu and Madhu, are the owners of South wall of the shop in question. Ahata of defendants is adjacent to the above-said wall and they started raising construction over the above said Ahata. Defendants want to demolish the above-said wall and want to install guarder, iron rod, silli and kadiya, on which they have no legal right to do so. Plaintiff No.2 is the owner in possession of property mentioned in para No.3 of the plaint and plaintiff No.1 is the tenant over the same. The defendants started raising construction of basement of above said Ahata. However, it is dangerous to the foundation of shop of plaintiffs and if defendants, succeed in their evil design, then plaintiffs would suffer irreparable loss.

Upon notice, defendants appeared and filed joint written statement wherein defendants took preliminary objection regarding maintainability, estoppel and locus-standi. It was submitted that plaintiff No.1 is not tenant under plaintiff No.2 and others. The names of other owners of the shop in question are not mentioned in the plaint. Plaintiffs have filed wrong site plan. The defendants have already raised construction of basement but the plaintiffs have not mentioned the exact position of their property in the site plan. Defendant No.2 is the owner and defendant No.1

they have already installed guarder and pattiya. It is further stated that defendant No.2 is co-owner of wall in question. On the northern side of plot and shop in question, defendant No.2 is owner of Ahata on which defendant No.1 is tenant. Defendants have constructed basement in their own land.

From the pleadings, following issues were framed:-

1. *Whether the defendants have no concern with the Southern wall of the property mentioned in para No.1 of the plaint? OPP*
2. *Whether plaintiffs are entitled to the injunction prayed for? OPP*
3. *Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD.*
4. *Whether present suit is not maintainable? OPD*
5. *Whether plaintiffs have estopped to file the present suit by their own acts and conduct? OPD*
6. *Whether suit is false and vexatious and defendant are entitled to special costs?OPD.*
7. *Relief.*

Plaintiff examined PW-1 Roshan Lal Gaud, who proved sale deed Ex.P1, PW-2 Musaddi Lal, who proved document Ex.P2, PW-3 Rajender Kumar Saini, Draftsman, who proved site plan, PW-5 Bhimsain Sanghi, PW-6 Parbhati Lal and plaintiff Roshan Lal examined himself as PW-4. On the other hand, defendants examined DW-1 Babu Lal, Ahlmad, DW-2 Musaddi Lal, DW-2 Rajender Kumar Saini, Draftsman, DW-4 Naresh Kaushik, record keeper, DW-5 Babu Lal, Ahlmad again, DW-6 Madan Lal Sharma, Advocate, DW-9 Hariom, Draftsman and defendant Rattan Lal examined himself as DW-8.

Learned Civil Judge (Jr. Divn.), Narnaul, vide impugned judgment and decree dated 23.01.2008, dismissed the suit. An appeal was filed and learned District Judge, Narnaul, vide impugned judgment and

decree dated 28.07.2010 dismissed the appeal also.

Aggrieved from the above-said judgments, present regular second appeal has been filed.

From the record and arguments, I find that the main dispute between the parties is only regarding Southern wall of the plaintiffs; whether it is a joint wall or exclusively owned by plaintiffs. At the time of arguments, it is admitted fact between the parties that plaintiffs purchased property from PW-5 Bhimsain Sanghi and defendants have also purchased the property from Bhimsain Sanghi. It is also admitted fact the sale deed of the plaintiffs is 8-9 years earlier to the sale deed of defendants. I have gone through the sale deed Ex.P2, which is dated 07.01.1987 registered on 08.01.1987. The perusal of the sale deed shows that it is specifically written that Eastern and Western walls are joint but Northern and Southern walls are sold to the vendees completely (salam). The vendees are the plaintiffs. Ex.P3 is another sale deed, which is of the year 1988. In this sale deed also, Southern wall has been stated to be sold to the vendees. Ex.P4 to Ex.P6 are the site plans. When the vendor has sold the property, including Southern wall which was already constructed at that time, exclusively to the vendees, now the Court, by calculating measurements of the shop, cannot held that the wall in question is joint. The Court is to give the interpretation to the averment as it is in sale deed, when these are clear and there is no uncertainty about the same. The Court has taken other averments to say that the property has been sold i.e. 20.6 feet and if this wall has been exclusively sold, then area will come to more than 21 feet. As the averments in the sale deed are clear and certain that Southern wall has been sold exclusively (salam) to the vendees-plaintiffs, then the averment is to be taken as it is and

findings qua the joint wall, are against the evidence and are perverse.

Further, the vendor PW-5 Bhimsain Sanghi has appeared in the witness box and admitted this fact that the Southern wall has been sold exclusively and has deposed in support of the plaintiffs. No other point is argued.

In view of the above discussion, I find that judgment and decree dated 23.01.2008 passed by learned Civil Judge (Junior Division), Narnaul and judgment and decree dated 28.07.2010 passed by learned District Judge, Narnaul, in appeal, are against the evidence and are perverse and the same are set aside.

Therefore, finding merit in the present regular second appeal, the same is allowed. The defendants-respondents are restrained from demolishing/raising construction over the Southern wall and further restrained from putting guarder, iron rod, silli, kadiya etc., for which defendants have no right. If any guarder etc. have been placed on the Southern wall, then the defendants are directed to remove the same from there. However, the defendants are at liberty to construct fresh wall in their own land. The suit filed by the plaintiffs-appellants stands decreed accordingly.

Registry is directed to prepare decree-sheet accordingly.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No