

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3520 of 2011 (O&M)

Date of Decision: 26.11.2018

Raju @ Rajinder Kaushik and others

...Appellants

VERSUS

Naresh Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kamal Sharma, Advocate
for the appellants.

None for respondent.

SURINDER GUPTA, J.

Plaintiff-respondent-Naresh Kumar filed suit seeking the relief of mandatory injunction to restrain the defendants-appellants from demolishing the wall marked as 'AB' as shown in site plan (Ex. P-2), claiming the same to be exclusive wall of the house shown as 'ABCDEFGH'.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Defendants contested the claim of plaintiff with the plea that house of defendant no. 1 is situated towards northern side of the house of plaintiff. Defendant no. 1 demolished his wall alongwith his house, which was exclusively owned by him. Plaintiff has no concern with the wall in question.

4. Pleadings of parties led to framing of the issues as follows:-

(1) Whether the plaintiff is entitled for permanent injunction restraining the defendant from demolishing the wall in question marked with letters AB and in alternate if the

wall is demolished during the pendency of suit, the defendant is liable to reconstruct the same? OPP.

- (2) Whether the present suit is not maintainable in the present suit? OPD
- (3) Whether the plaintiff has no *locus standi* and cause of action to file the present suit? OPD.
- (4) Relief.

5. Learned trial Court recorded the finding on issue no. 1 against plaintiff with the observation as follows:-

- “16. When plaintiff claims his ownership of house marked by letters ABCDEFG, as shown in the site plan Ex. P2 then he was supposed to produce relevant evidence for proving the same.*
- 17. Except plaintiff, no other witness of the locality and family member of plaintiff appeared in the witness box. Sole testimony of plaintiff remained uncorroborated.*
- 18. Plaintiff stepped into the witness box as PW1 and admitted that he purchased house in the year 1976 from Risal Singh and Diwan Chand and he raised construction of house after purchasing the same. Plaintiff duly admitted that house of plaintiff stands upon pillars.*
- 19. In LC report Ex. DW3/C, 18 inches wall, towards southern portion of the house of defendant no. 1, has been shown as removed and thereafter, there is another wall in which several holes as seen in photographs Ex.*

D1 to Ex. D6 exist, in which almirahs of plaintiff, have been shown.

20. *Admittedly, wall in which almirah of plaintiff exists is a separate wall from the wall of 18 inches, which have been removed by defendant.*

21. *Plaintiff was supposed to prove that wall AB actually belongs to him but he failed on this score.*

22. *If 18 inches wall which have been removed by defendant no. 1, belongs to plaintiff then there was no necessity for plaintiff to raise another wall in which almirahs exist towards the house of plaintiff and to raise construction of his house on pillars.”*

6. On appeal, learned District Judge, Jhajjar set aside findings of the trial Court with the observations as follows:-

“12. I have carefully perused the pleadings and evidence of the parties available on the file and have come to the conclusion that the findings of learned trial Court on issue no. 1 are liable to be reversed. The plaintiff has come to the court with a clear stand that his father purchased a residential house fully detailed and described in para no. 1 of the plaint and situated within the abadi deh of village Beri and that house was shown by him with alphabets ABCDEFG, in the site plan (Ex. P2). The boundaries of the house of the plaintiff are as under:-

East : House of Karan Singh :30'7”

West : House of Madan Lal : 34'0"

North : House of Janardhan : 30'8"

South : Open land of the plaintiff: 29'0"

13. *The plaintiff has placed on record sale deed (Ex. P1) and site plan (Ex. P1/A) in support of his stand. A careful comparative perusal of the documents (Ex. P1, Ex. P1/A and Ex. P4) would go to show that the wall AB i.e. the wall in dispute as shown in site plan (Ex. P2) is the Northern wall of the house of the plaintiff. On the Northern side of this wall, there is the house of Janardhan, who was the father of defendant no. 1. This wall is the same wall which has been shown within tick marks in site plan (Ex. P1/A). The length of this wall is 30'8". It is a straight wall. The defendant has not denied the correctness of the averments of the sale deed (Ex. P1) and the site plan (Ex. P1/A) in any manner. The plaintiff has claimed his ownership and possession over the house which was purchased vide sale deed (Ex. P1). This stand of the plaintiff is well proved with his statement and the documents referred to above. This being so, no other evidence was required to be adduced by the plaintiff to prove issue no. 1. Learned trial Court failed to appreciate this evidence in a correct manner and fell into error. There is nothing on the file which can go to show that the pillars and the wall constructed by the plaintiff within points AB as shown in site plan*

(Ex. P2) had enhanced the area of his house towards northern side, then the area purchased by him vide sale deed (Ex. P1). Therefore, it is clear that the plaintiff was owner of the wall in dispute and he had got the right to seek injunction against defendant no. 1 if defendant wanted to demolish the same. It has come on the record that the wall in dispute has been dismantled by the defendant while reconstructing his house. Therefore, the plaintiff had got the right to get the wall in dispute reconstructed at the same place as mentioned in later part of issue no. 1. Therefore, I hereby reverse the findings of learned trial Court on issue no. 1 and decide it in favour of the plaintiff and against the defendants.”

7. Against judgment of Ist Appellate Court, defendants have come up with this appeal.

8. I have heard learned counsel for the appellants and perused the lower Court record with his able assistance.

9. The dispute pertains to wall shown as 'AB' in the site plan (Ex. P2), which is on northern side of the house of plaintiff. On this side earlier there was house of Janardhan and it appears that after death of Janardhan, his sons have constructed their separate houses. This fact is evident from site plan (Ex. D1) produced on file by defendants. Learned trial Court while dismissing the suit of plaintiff took note of the fact that plaintiff has raised pillars for the roof of his house. The trial Court appointed a local commissioner, who gave his report, which was relied upon by the defendants and exhibited as DW3/C. As per report of local commissioner,

towards side of the house of Bijender, which is on western side of the house of defendants, in the same wall, i.e. wall in dispute, plaintiff has almirah and *parchatti* (a shelf in the corner of room by means of an under roof) towards his side. This shows that the wall was being exclusively used by the plaintiff. The area of the house purchased by plaintiff is also mentioned in sale deed dated 20.07.1976 as follows:-

<i>East</i>	:	<i>30'7"</i>
<i>West</i>	:	<i>34'0"</i>
<i>North</i>	:	<i>30'8"</i>
<i>South</i>	:	<i>29'0"</i>

10. Site plan (Ex. P2) shows the same area of the disputed house and it is nowhere the case of defendants that the wall in question was beyond the area of 34' on southern side of the house of plaintiff. Learned trial Court did not look into the report of local commissioner and facts stated therein. It has taken note of the fact that plaintiff had constructed the house on pillars. Raising of pillars does not mean that plaintiff has given the wall to the neighbourer when admittedly, there is almirah and *parchatti* in the wall towards side of the plaintiff. It is quite possible that at the time of constructing the house plaintiff may not have liked to demolish the wall so as to cause any inconvenience to neighbourer. Photographs placed on file show that after removal of the wall by the plaintiff, there was no wall towards the side of plaintiff. There was plaster in between pillars, which were lying broken. The pillars were visible from the side of the house of defendants. It is quite strange that brother of defendants have no dispute with plaintiff regarding title over the wall in question. It is only defendants, who are disputing this fact. In case the wall was exclusive wall of

Janardhan, his brother would have also joined the defendants and raised the disputed with plaintiff.

11. On perusal of judgment of Ist Appellate Court, I find that the same is based on proper appreciation of evidence and I find no legal or factual infirmity therein calling for any interference in this appeal, which has no merit.

Dismissed.

November 26, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No