

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3860 of 2012 (O&M)

Date of Decision: March 12, 2018

Baldev Singh & another

...Appellants

Versus

Nachattar Singh @ Kaka Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.D.S.Nigha, Advocate,
for the appellants.

Mr.Bhawesh Chaudhary, Advocate for
Mr.Vivek Suri, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for permanent injunction restraining the appellant-defendants from affixing the gate at point `AB' instead of point `GK' shown in the site plan, Annexure P-1, situated in Village Baliali, Tehsil and District Mohali, had been decreed and the appeal laid before the Lower Appellate Court was also dismissed.

Respondent-plaintiff instituted the suit claiming the aforementioned relief on the premise that plaintiff and defendant No.1 are real brothers and they had another brother, namely, Gurnam Singh and defendant No.2-Bhupinder Singh is son of defendant No.1-Baldev Singh. Plaintiff, his brother Baldev Singh and Gurnam Singh were having abadi house in the village. On 3.5.1991, all the brothers had partitioned the

aforementioned abadi house with the intervention of respectable and common friends vide compromise deed dated 3.5.1991. As per the said compromise, portion shown 'EFGH' in the site plan came to the share of plaintiff, whereas portion 'FIJKG' to the share of defendant No.1 and portion 'JLMN' to the share of Gurnam Singh, i.e., third brother of plaintiff and defendant No.1. At the time of partition, defendant No.1 had agreed that he would affix the gate at point 'GK' shown in the site plan and had affixed the gate at point 'GK', but after removing the gate, the defendants were going to reconstruct the gate at point 'AB' giving cause of action to institute the suit, for, by affixing the gate at point 'AB', the defendants wanted to close window of the gate of plaintiff.

Appellant-defendants appeared and file written statement by stating that the respondent-plaintiff did not honour the compromise as he was to pay certain amount as reflected in the compromise. It was the plaintiff, who had affixed the window at point 'W' shown in the site plan, but the defendants did not raise any objection due to the close relationship, therefore, the plaintiff cannot be permitted to seek injunction as he also violated the compromise dated 3.5.1991.

Replication was filed by controverting the averments made in the written statement and reiterated made in the plaint. The trial Court, on the basis of the pleadings of the parties to the lis, framed the following issues:-

- “1) Whether the plaintiff is entitled to permanent injunction, as prayed for? OPP*
- 2) Whether the suit is not maintainable in the present form? OPD*
- 3) Relief.”*

The respondent-plaintiff, in order to prove his case, examined himself as PW-1, Hakam Singh PW-2, Ranjit Singh Advocate PW-3. On the other hand, the appellant-defendants examined defendant No.1 Baldev Singh as DW-1, who tendered his affidavit Ex.DW1/A in the form of examination-in-chief.

The trial Court, on the basis of the evidence, including the compromise, decreed the suit and the appeal, as indicated above, was also dismissed by the Lower Appellate Court.

Mr.D.S.Nigha, learned counsel appearing on behalf of the appellant-defendants submitted that the respondent-plaintiff breached the terms and conditions of the compromise deed dated 3.5.1991 as he did not pay the money. It is in that background, there was deviation from the terms of the compromise by uprooting the gate from point 'GK' and placing at point 'AB'. All these factors, if had been taken into consideration, the same would have led into dismissal of the suit, for, the plaintiff had not approached the Court with clean hands.

Per contra, Mr.Bhawesh Chaudhary, Advocate for Mr.Vivek Suri, Advocate, for the respondent-plaintiff submitted that the judgments and decrees of the Courts below are perfectly legal and justified and do not call for any interference. The compromise was effected on 3.5.1991. All the parties adhered to the same. The window was already in existence. It was just a ploy to cause harassment and settle ego. The defendants wanted to put the gate at point 'AB' in order to create nuisance.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and substance in the submissions of the learned counsel for the appellant-defendants. If at all,

there was deviation or the breach of the compromise dated 3.5.1991, which the appellant-defendants admitted, they would have proved the same by leading cogent evidence. Nothing prevented them to claim relief under Section 39 of the Specific Relief Act for want of breach of obligation by sending a legal notice, but once the parties remained silent for almost sixteen years, it cannot be believed that the amount was not paid.

No documentary evidence has been placed on record to show that the defendants were not paid a sum of ₹2700/- by the plaintiff. The trial Court, on the basis of the preponderance of the evidence, much less the compromise which was admitted by the appellant-defendants, granted injunction as the compromise did not permit the defendants to put the gate at point `AB', which has already been put at point `GK'.

For the reasons stated above, the concurrent findings do not warrant any interference, much less suffer from any illegality or perversity. No substantial question arises for determination. The appeal is devoid of merit. Resultantly, the same is dismissed.

March 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No