

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

RSA No.5055 of 2012 (O&M)
Date of decision: 27th February, 2018

Ashwani Kumar

... Appellant

Versus

Iqbal Kaur & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Veneet Sharma, Advocate for the appellant.

Mr. K.S. Rekhi, Advocate for the respondents.

FATEH DEEP SINGH, J.

Initially the plaintiff Santosh Singh (now deceased and being represented by his LRs) filed a suit for permanent injunction etc. against defendant Ashwani Kumar seeking decree for permanent injunction restraining the defendant from demolishing common wall of the house of plaintiff and that of the defendant. The Court of learned Additional Civil Judge (Senior Division), Patti through judgment dated 25.02.2011 decreed the suit with costs. The appeal of the defendant/appellant too stood dismissed vide judgment dated 03.10.2012 by the Court of Additional District Judge, Tarn Taran. It is in these circumstances, the instant second regular appeal has come about.

In precise the claim of the plaintiff is that it is a common wall on which rests the girders and other part of the construction and if the

defendant proceeds ahead with this, would cause loss to him and which is controverted by the defendant in his pleadings taking a plea that it was exclusive wall of his house. On pleadings, the trial Court framed following issues:

1. Whether plaintiff is residing in the house in Waddi Mandi Patti and on the eastern side there is wall of house of defendant? OPP
2. Whether defendant is demolishing wall in dispute shown RED in the site plan? OPP
3. Whether the plaintiff is entitled for decree of permanent injunction against defendant from demolishing another wall of the house of plaintiff and house of defendant? OPP
4. Whether plaintiff has suppressed material facts from the Court and has not placed true and full facts, as such is not entitled for discretionary relief? OPP
5. Whether site plan attached with the plaint is wrong and not correct according to actual position at the spot? OPP
6. Whether plaintiff has no right or interest with the wall in dispute and has no locus standi to file the present suit? OPD

7. Whether plaintiff was and is never in possession and suit is not maintainable in the present form? OPD
8. Whether defendant has purchased the house situated on the eastern side of the wall in dispute along with other persons from Dharam Pal vide registered sale deed dated 28.1.1994 and this wall is in dilapidated condition? OPD
9. Whether plaintiff is wrong doer and has demolished the construction made in the Maszid having MC No.20/2, New No.274/2? OPD
10. Whether suit is bad for non-joinder of necessary parties? OPD
11. Relief.

At the trial, the plaintiff examined four witnesses and proved documents Ex.P1 to Ex.P21. On the other hand, defendant examined three witnesses and proved documents Ex.D1 to Ex.D16 followed by the impugned findings.

As is argued on behalf of the appellant/defendant by his counsel Mr.Veneet Sharma, Advocate who has tried to take plea that it was exclusive wall of the defendant's house and the plaintiff had no right, title or interest therein. Since it is the defendant who has taken up this

plea after initial proof by the plaintiff that it is a common wall between the parties, the onus rests upon the defendant to prove his stand. As is there and it is so, the report of the Local Commissioner Ex.P5 clearly reflects that part of the wall has since been removed apparently as has been contended by the respondent side by their counsel Mr. K.S. Rekhi, Advocate, it is the appellant who has sought to take law in his hands during the course of trial of the suit. The argument that is sought to be reiterated that the sale deed Ex.D1 shows that it was exclusive wall of the two neighbours, such a recital in a sale deed of the defendant does not absolves him of his obligation to prove his stand that the wall is exclusive wall of the defendant's house.

To the specific query of the Court, learned counsel for the appellant was unable to pinpoint what documentary evidence much less oral has come about to prove this fact of the wall being exclusive ownership of the appellant/defendant and which has precisely been considered by the trial Court. It is admitted stand of the two sides that construction is very old and as is there even the premises of the plaintiff earlier formed part of a Masjid which is still in existence and there is in-between a wall which is now being shared by the defendant. The conclusions drawn by the trial Court that the defendant has purchased the house on eastern side of the wall along with other persons subsequent thereto but none of the parties had examined the original owner of these

properties to bring forth the oral testimony to this effect. However, one situation clearly emerges on the submissions made before this Court that the vendees have purchased the properties subsequently out of the Masjid property and in-between is a wall, certainly leads to only and the only irrefutable conclusion that the wall is common.

Since it is well established from the report of the Local Commissioner Ex.P5 as well as Photographs Ex.P2 to Ex.P4, building plan Ex.P1 and Ex.P7 that certain girders and weight of the roof of plaintiff's property lies on this wall. The wall being demolished by the labourers is well depicted in the photographs of the plaintiff Ex.P2 to Ex.P4. Though the defendant has sought to rebut the documentary evidence by leading his own photographs, site plan and property registry, but one thing bears out even from the own documents of the defendant/appellant that it is a load bearing wall on which rests ballas and girders of the house of the plaintiff/respondent. The testimony of the plaintiff's witnesses could not be demolished in the cross-examination nor any material could be brought to the notice of this Court by the appellant's counsel which could be of any help to the case of the appellant. It is not a case where the parties are supposed to prove their title and it is well enunciated principle of law that in a simplicitor suit for permanent injunction, the Court is not supposed to ascertain the title and the only three elements of prima-facie, irreparable loss and balance of

convenience are to be seen and gone into by the courts. When it is there in the cross-examination of Ashok Kumar DW2 himself, as has been pointed out by the respondent side, admits that the construction of the premises of the defendant and adjoining workshop was very old and both the parties i.e. plaintiff and defendant had purchased these properties subsequently. Even no suggestion has been put to the plaintiff side during the cross-examination of this witness that the wall was exclusive wall of the defendant and was not a common wall. The Local Commissioner, as has been the arguments put forth before this Court, has made a report that on the western side of the disputed wall is the house of defendant and on the eastern side is the house of the plaintiff, whereas the respondents' counsel to enliven his submissions has pointed out that to rebut the building plan of the plaintiff Ex.P1/Ex.P7 though the defendant/appellant has proved his site plan Ex.D2 but has failed to examine, as has been observed in the findings of the Court below, the person who prepared the site plan Ex.D2 and thus, has kept away from the Court a vital piece of evidence apparently which never suited the appellant and therefore the site plan of the defendant cannot be considered as a legal and legitimate piece of evidence in the absence of examination of its author. The learned trial Court has given much weight to the report of the Local Commissioner and has during its findings clearly held that roof of one room and varandah of the house of the plaintiff are resting on this wall on

which three girders are also placed along with ballas, are matters of much relevance.

Since the very three essentials have been well established by the plaintiff, upon whom the onus heavily lay, but the same could not be displaced by the defendant in his stand, the findings returned by the trial Court on the issues needs to be upheld. There is neither any illegality nor any impropriety in the findings of the two courts below. Thus the same are upheld and the appeal being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 27, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No