

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

**RSA No. 1529 of 2016 (O&M)
Date of decision: 15.05.2018**

Rattan Kumar

.....Appellant

Vs.

Iman Kumar and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE**

Present: Mr. Rajinder Singh Rana, Advocate for the appellant.

Ajay Kumar Mittal, (ACJ).

1. Having failed before both the courts below, the appellant-plaintiff has filed the present regular second appeal challenging the judgment and decree dated 08.09.2015 passed by the Additional District Judge, Kurukshetra and affirming that of Civil Judge (JD) Pehowa dated 04.03.2015 whereby suit of the plaintiff for permanent injunction has been dismissed.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-plaintiff was owner in possession of a bara shown as ABCD in the site plan attached with the plaint. The appellant had planted trees in an area measuring 33 feet x 43.6

feet existing in the Eastern side of the said bara and its remaining portion was being used by him for domestic purposes peacefully and without any hindrances from any quarter. It was claimed by the appellant/plaintiff that the suit property had been given to him by the Gram Panchayat on 11.1.1989 through a writing duly signed by the Sarpanch and other respectable persons. Defendant No.1-respodnent was also given a bara towards the eastern side of his bara and a wall marked as AB shown in read colour in the site plan had been constructed by him out of his own expenses. According to the appellant, the respondents wanted to encroach upon the same. Upon notice, the respondents pleaded that under the garb of the suit, the appellant wanted to encroach upon their property which was shown in green and red colour in the site plan dated 28.8.2012. It was further stated that a partition wall marked with letters AB and shown in red colour in the site plan existing between the properties of the parties had been removed by the appellant plaintiff himself. Further, the Gram Panchayat was not competent to decide the matter qua the property of the respondents.

3. From the pleadings of the parties, the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled for a decree for permanent injunction as prayed for? OPP
2. Whether the plaintiff is entitled for a decree for mandatory injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not legally maintainable in the present form? OPD
4. Whether plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD

5. Whether the plaintiff has not come to the Court with clean hands and has concealed the true and material facts from the Court? OPD
6. Whether the plaintiff is stopped from filing the present suit by his own act and conduct? OPD
7. Whether Civil Court has not jurisdiction to try and entertain the present suit? OPD
8. Relief?”

4. On appreciation of the oral as well as documentary evidence led by the parties came to the conclusion that the appellant/plaintiff failed to prove his claim by cogent and convincing evidence. Accordingly, the trial court vide judgment and decree dated 04.03.2015 dismissed the suit of the plaintiff. Aggrieved thereby, the appellant filed an appeal before the lower Appellate Court which met the same fate. Hence the instant appeal by the appellant-plaintiff claiming the following substantial questions of law:-

- “i. Whether the judgment and decree passed by the Ld. Courts below is illegal and perverse?
- ii. Whether the findings of the Ld. Courts below is suffering from in apparent perversity as the face of it being contrary to law and facts on record?
- iii. Whether the impugned judgment and decree suffers from an apparent, illegality and perversity because of ignoring the material piece of evidence has been direct impact on decision of the case?
- iv. Whether the impugned judgment and decree can be allowed to be sustained especially when the same are result of consideration of irrelevant fact and non-consideration of relevant fact?

- v. Whether the Ld. Courts below have committed serious irregularities and illegalities, in dismissing the suit of the appellant/plaintiff?
- vi. Whether the findings recorded by the Ld. Courts below are perverse in nature?
- vii. Whether the Ld. Courts below have misread and misconducted the evidence on the file and has failed to consider the material evidence on the file and thus have committed serious illegality?"

5. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

6. Learned counsel for the appellant has made an attempt to persuade this court to re-appreciate the evidence led by the parties before the trial court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The courts below had recorded a concurrent finding of fact that since the plaintiff/appellant himself alleged to be in possession of the suit property as mentioned in the site plan, he failed to prove the same showing description of the suit property. He also failed to examine concerned Architect who prepared the site plan for the purpose of proving it. Moreover, the appellant alleged himself to be owner in possession of the suit property on the basis of the letter dated 11.1.1989 of Gram Panchayat. However, he failed to prove on record his ownership as well as his actual possession over the suit property. With regard to the construction of wall at point AB, the plaintiff himself deposed in his affidavit Ex.P1/A that during the pendency of the case, compromise was effected on 02.06.2013 and 13.12.2013. The relevant findings recorded by trial Court in this regard read thus:-

“It is settled preposition of law that plaintiff has to stand on his legs as he cannot take benefit of weakness of case of defendants. Though, plaintiff has examined two witnesses to support his case but plaintiff has failed to prove his case as plaintiff himself is alleging to be in possession of suit property as mentioned in site plan. However, plaintiff has failed to prove said site plan showing description of the suit property as per rules. Plaintiff has failed to examine concerned Architect who prepared site plan for the purpose of proving it. More so, plaintiff is alleging himself to be owner in possession of suit property on the basis of letter dated 11.01.1989 of Gram Panchayat vide which he alleges that he had became owner in possession of suit property. However, plaintiff has failed to prove on record his ownership as well as his actual possession over suit property. Further, it is case of plaintiff that point AB is situated within suit property whereas it is case of defendants that point AB is not situated in suit property and at point AB there was partition wall between the property of plaintiff and defendants and plaintiff himself removed said wall. When once existence of point AB in suit property is denied by defendants, it was required on part of plaintiff to prove on record that point AB is situated in suit property. However, plaintiff has failed to prove so. It is pertinent to mention that at the time of his evidence, plaintiff has deposed in his affidavit Ex.PW1/A in para no.8 that during the pendency of the case, compromise was effected on 02.06.2013 and 13.12.2013 and plaintiff has already constructed wall at point AB.”

The said findings were affirmed by the lower Appellate Court on appeal by the appellant.

7. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this court in the regular second appeal. I do not find any ground to differ with the view taken by the courts below.

8. No question of law, much less a substantial question of law arises in this appeal for consideration of this court.

9. In view of the above, there is no merit in this appeal and the same is hereby dismissed.

May 15, 2018	(Ajay Kumar Mittal)
‘gs’	Acting Chief Justice
Whether speaking/reasoned	Yes
Whether reportable	Yes