

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA No.3261 of 2016
Date of decision: 11.7.2018.

Anil Kumar and another

... Appellants

Versus

Nachhattar Singh and others

... Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- V.K. Shukla, Advocate
for the appellants.

Harinder Singh Sidhu, J.

This Regular Second Appeal has been filed by the plaintiffs against the judgments of the courts below whereby their suit for declaration to the effect that, the wall marked as ABCD and shown as RED in the site plan annexed with the suit, and intervening wall between the property of the plaintiffs and the defendants situated at Raikot Road Jagraon, Tehsil Jagraon, District Ludhiana, is joint wall of the parties and both parties have equal right of user and enjoyment thereof, has been dismissed.

The case of the plaintiffs was that they had purchased the property from its previous owners namely, Sat Dev etc. vide registered sale deed dated 22.7.1983. The defendants were owners of the house situated on the northern side thereof. A wall coloured as Red and marked as ABCD in the site plan in between the property of the plaintiffs and house of the defendants, was the joint wall of the parties and neither of the parties could assert exclusive ownership thereof. It was pleaded that there exists old construction prior to the purchase of the property by the plaintiffs and that a large old girder and rafters were inserted into the said wall and there also existed an almirah inserted in the disputed wall which established that the

wall was joint and not exclusive possession of the defendants.

The defendants on the other hand, asserted that wall was in their exclusive ownership. They further asserted that there was no insertion in the wall, as alleged by the plaintiffs nor was any there almirah as alleged by them. It was further their case that late Ram Saroop who originally owned the property which now vests with the plaintiffs had with the consent of late Harnam Singh, father of defendant No.1 rested some rafters on the wall of the defendants to make some accommodation as he was too poor to construct the wall by himself. Acknowledging this fact, the predecessor-in-interest of the plaintiffs never raised any dispute regarding wall and acknowledged the exclusive right of the defendants over the said wall. It is only the plaintiffs who were the subsequent purchasers who have now raised this dispute.

In support of their case, the plaintiffs examined as many as 10 witnesses. On the other hand, the defendants examined as many as 06 witnesses.

Learned trial court after exhaustive discussion of the entire evidence, came to the conclusion that the wall marked as ABCD in the site plan was not a common wall of the parties, rather it was a separate wall exclusively owned by the defendants.

On arriving at the conclusion, the learned trial court relied on the testimony of the most material witnesses of the plaintiffs i.e. PW-1, Gurbinder Singh, Draftsman, PW-2, Gurtej Singh Gill, Advocate, Local Commissioner, PW-3, Kalyan Singh building expert, PW-5, Rajinder Pal, PW-10 Anil Kumar, plaintiff himself. The court noted that no doubt, PW-1, Gurbinder Singh, draftsman had deposed that he had prepared the site plan

Ex.P-1 and there was an almirah opening in the room mark X embedded in the disputed wall and the *ballas* of this room and *girders* of the front room were found inserted in the disputed wall when he visited the spot. The court further noted that this witness in his cross-examination deposed that he had not seen the site plan of the house of the plaintiffs as approved by the Municipal Committee. He further admitted that the portion surrounded by the wall ABC and its opposite wall, is constructed by lintel (RCC slab). The court concluded that this demonstrated that for the construction of this room, no support had been placed on the disputed wall. Similarly, PW-2 Gurtej Singh Gill, Advocate, Local Commissioner in his cross-examination has also stated that front hall covering the wall marked as BC and its opposite wall has been newly constructed with RCC slab and there is no necessity to support the same by inserting girders in this wall. The court concluded that the version of this witness also proved that wall marked BC and its opposite wall of the hall is newly built. The court further held that the version of PW-1 and PW-2 that the wall mark BC and its opposite wall has been recently constructed by the plaintiffs further finds corroboration from the admission of PW-10, Anil Kumar (plaintiff No.1 himself) who in his cross-examination stated that he could not tell the exact length of the wall nor he could tell the length of the shop which is situated on the Raikot road in the East which adjoins the house of the defendants.

On the other hand, the defendants had adduced sufficient and convincing evidence to prove their case that the disputed wall marked as ABC was not the joint wall of the parties but was exclusively owned by the defendants. Besides, relying on the statement of DW-1 Shanti Devi, and her son DW-3 Baljit Sharma, the learned court based its conclusion on the

statement of DW-6 namely Pritam Singh Dhaliwal building expert who deposed in his affidavit Ex.DW6/A that the disputed wall mark ABC was not a common wall of the parties.

The findings of the learned trial court have been affirmed by the learned Lower Appellate Court.

Findings of fact have been recorded by the courts below, learned counsel for the appellant has not been able to establish as to how the findings of fact recorded by the Courts below are perverse or against the record. No question of law arises for decision in this appeal.

Dismissed

(Harinder Singh Sidhu)
Judge

11.07.2018
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Whether Speaking / Reasoned	Yes/No
Whether Reportable	Yes /No