

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

RSA No.2926 of 2015 (O&M)

Date of decision : 09.10.2018

Raj Karan

...Appellant

Versus

Narain Singh (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jatin Hans, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.7079-C of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 194 days in filing the present appeal is condoned.

Application is allowed.

CM No.7080-C of 2015

Application is allowed.

Legal heirs of deceased Narain Singh, as mentioned in para 3 of the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Main case

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs claim that a Temple and Dharamshala (place of residence of religious tourists) have been constructed and there is a passage which is sought to be encroached upon by the defendants.

The defendants-appellant contested the suit and pleaded that

they are proprietors of the shamlat land and they are in possession according to their share and gate of the Temple and the School have been wrongly opened towards this side. During the pendency of the suit, Local Commissioner was appointed who reported that the property in dispute is being used as a passage by everyone. The defendants when appeared in the evidence also admitted that there is a passage.

Thus, learned trial Court decreed the suit while granting injunction in favour of plaintiffs. The first appeal filed by the defendants was also dismissed after re-appreciating the evidence.

Learned counsel for the appellant submits that learned trial Court has recorded a finding that the plaintiffs are owner of the property and, therefore, such findings are without jurisdiction.

This Court has considered the submissions, however, find no substance therein. In the present case, learned trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled to relief of injunction on the grounds as alleged in the plaint, as prayed for? OPP*
2. *Whether the plaintiff has locus standi to file the present suit? OPP*
3. *Whether the suit of plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff is estopped by his own act and conduct? OPD”*

It is apparent that there is no issue with regard to the determination of title. Still further, learned trial Court while decreeing the suit had only restrained the defendants from interfering in the possession of

the plaintiffs and the defendants have been given right to stake its claim after proving their title. The operative part of the findings given by the learned trial Court is in para 25, which is extracted as under:-

“25. As a sequel to the above findings, the suit of the plaintiff partly succeeds and a decree of permanent injunction is passed in favour of the plaintiff and against the defendants restraining the defendants from interfering in the peaceful possession of the plaintiff shown with letters EFGH. A decree of permanent is further passed in favour of the plaintiffs restraining the defendants from interfering in the passage marked with letters ABCD in site plan Ex.P1 and restraining the defendants from illegally taking the possession of the said Rasta except in due course of law. The suit of the plaintiff is accordingly partly decreed with costs. However, counter claim filed by the defendants is dismissed being devoid of any merit. Decree sheet be prepared accordingly and file be consigned to record room after due compliance. Announced in open court.”

It is apparent that only injunction suit has been decided and there is no decision on the title.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

09.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No