

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3602 of 2014 (O&M)
Date of Order: 10.05.2018

Sadhu Ram and another

..Appellants

Versus

Bishan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumit Gupta, Advocate,
for the appellants.

Mr. Ravinder Malik, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

C.M.No.8366-67-C of 2014

Prayer in these applications is for condonation of delay of 82 days in filing and 23 days in re-filing the appeal.

For reasons mentioned in these applications, which are supported by an affidavits, the delay of 82 days in filing and 23 days in re-filing are condoned.

Applications are allowed.

MAIN

Plaintiffs-appellants are in the regular second appeal against the orders passed by the courts below rejecting the plaint under Order 7 Rule 11 CPC.

Plaintiffs previously also filed a suit for injunction claiming that the defendants are trying to encroach upon the street. During the

pendency of the previous suit, defendants suffered a statement before the court on 01.03.2011, undertaking not to encroach upon the street. First suit was withdrawn. However, as pleaded in the plaint, defendants once again tried to encroach upon certain portion of the street on 07.01.2013 i.e. after the previous suit was withdrawn. Therefore, the plaintiffs filed the suit.

Learned trial court rejected the plaint on the ground that once the previous suit was withdrawn on the same cause of action, subsequent suit would not be maintainable. Learned courts have overlooked the fact that the cause of action in the subsequent suit as pleaded is in paragraphs 8 and 9 of the plaint, which are extracted as under:-

“8. That for some time the defendants remained silent but on dated 07.01.2013 the defendants came on the spot along with some other persons and they again started to raise the wall in the street with the intention to encroach the land of the street. The plaintiffs immediately rushed to the spot and they also gather some other persons and some respectable of the village and they stopped to the defendants to proceed further to raise the defendants went away from the spot but they threatened to the plaintiffs that they not lift the bricks from the spot rather they will raise the wall in future very shortly and no one can stop them to encroach the land of the street. The plaintiffs requested them not to take the law in their hands but they flatly refused to accept the genuine request of the plaintiffs and hence the suit.

9. That the cause of action arose when the demarcation

of the suit property was done by competent authority and it was established that the defendants had encroached the land of street 3 feet in width and 38 feet in length and further on dated 07.01.2013 when the defendants actually tried to raise the wall further with the intention to encroach the land of the street/gali forcibly and illegally without any right title and interest and the cause of action is continuous one.”

A careful reading of the aforesaid paragraphs of the plaint, it is apparent that the courts below have erred in recording that the subsequent suit is on the same cause of action. Still further whenever an attempt is made to encroach upon a public street, fresh cause of action would arise. Encroachment of a public street also gives rise to a continuous cause of action.

In view of the aforesaid, the regular second appeal is allowed and the judgments and decrees passed by both the courts below are set aside. The suit is restored to its original number.

Parties through their counsels are directed to appear before the trial court on 08.06.2018.

May 10, 2018
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(ANIL KSHETARPAL)
JUDGE

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