Paramjit Kaur Saini
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In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1484 of 2018(O&M)
Date of Decision:28.3.2018

Jaswinder Singh and another

---Appellants

vs.

Kaka Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Naresh Kaushal, Advocate
for the appellants

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Rekha Mittal, J.

The present appeal directs challenge against consistent findings recorded by the Courts whereby suit for mandatory and permanent injunction filed by respondent-plaintiff Kaka Singh in respect of public street measuring 11' x 71' and kacha street situated in abadi deh of village Kumbra, Tehsil and District Mohali was decreed and the appellants-defendants were directed to remove the bricks placed in the street in question at point 'W' as shown in the site plan Ex. P1. The appellants-defendants were also permanently restrained from encroaching upon the said street forcibly or illegally. The judgment and decree passed by the trial court came to be affirmed by the Additional District Judge, SAS Nagar Mohali.

The sole submission made by counsel is that the Court in Appeal has held in para 14 of the judgment that in suit titled “Sher Singh vs. Kehar Singh and others” decided on 18.12.1995, trial court gave findings regarding existence of passage. Ex. P-6 is the site plan which also shows the same passage adjudicated in afore titled suit as is shown in Ex. P1. No appeal is stated to have

been filed against the judgment and decree dated 18.12.1995, thus, finding recorded therein has attained finality though the present plaintiff was not a party to that suit.

It is argued with vehemence that as a matter of fact, judgment and decree dated 18.12.1995 is the subject matter of challenge in RSA No. 2985 of 2000 tiled "Sukhdev Singh vs. Sher Singh and others" and the same is pending in this Court, therefore, findings recorded by the Court in Appeal that the judgment and decree dated 18.12.1995 has attained finality are erroneous and liable to be set aside. It is prayed that the present appeal may be admitted and ordered to be heard with RSA No. 2985 of 2000.

I have heard counsel for the appellants, perused the paper book particularly the judgments passed by the Courts.

Apart from the fact that the appeal is barred by limitation of 672 days without any tangible explanation constituting sufficient cause for condoning delay, the same is devoid of merit and liable to be dismissed.

I have gone through the file of RSA No. 2985 of 2000 but the said appeal pertains to civil suit decided on 31.10.1996 and the first appeal was decided on 19.4.2000 meaning thereby that the judgment and decree dated 18.12.1995 is not the subject matter of challenge in the said regular second appeal. The title of the suit in the said case is "Sukhdev Singh vs. Gurbax Singh and others" and the suit pertains to issuance of directions to Gurbax Singh and others (defendants No. 1 to 6 therein) for removing manger along AC and barbed wire around site ABC situated in abadi of village Kumbra shown in the site plan and for permanent injunction restraining the defendants from making any further construction or in any way putting the site A, B, C for their exclusive use and thus, depriving the plaintiff and other residents of village for using this common site for them and their cattle. The said suit was instituted by one of the appellants namely Sukhdev Singh.

As the subject matter of RSA No. 2985 of 2000, relied upon by counsel for the appellants is entirely different from the decision that finds reference in judgment of the Court in Appeal in para 14, appellants cannot derive any advantage to their contention on the basis of pendency of the aforesaid regular second appeal. Rather, counsel for the appellants is guilty of making reference to an appeal which has nothing to do with the issue in controversy. In this view of the matter, contention of the appellants for admitting the present appeal to be heard alongwith RSA No. 2985 of 2000 is highly misconceived and rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

Before parting with this order, it is pertinent to mention that the appellants have filed an application under Order 41 Rule 27 of the Code of Civil Procedure for adducing additional evidence. Counsel for the appellants has not made any submission with regard to merits of the said application and accordingly the application for additional evidence also stands disposed of.

(**Rekha Mittal)**
Judge

28.3.2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No