

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1782 of 2018(O&M)

Date of Decision:30.7.2018

Dalbir Chand and others

---Appellants

vs.

Kashmiri Lal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.B.S.Dhillon, Advocate
for the Appelalnts

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent and mandatory injunction filed by the respondent-plaintiff restraining the appellants-defendants from encroaching upon suit property i.e. gali and to install a gate in gali in dispute and mandatory injunction directing the appellants to remove the lintel put on suit property was decreed by the trial court vide judgment and decree dated 1.5.2015 and the appeal preferred by unsuccessful defendants-appellants came to be dismissed by the Additional District Judge, Kurukshetra on 15.1.2018.

The sole submission made by counsel for the appellants is that

the defendants in the written statement have raised a plea that the suit is barred under Order 2 Rule 2 of the Code of Civil Procedure (in short “the Code”) but the trial court did not frame an issue in this regard nor decided the same on the basis of materials on record as well as in view of implications of Order 2 Rule 2 of the Code, in the face of earlier suit titled “Kartaro Devi and another vs. Dalbir Chand and others” having been filed for grant of permanent and mandatory injunction qua the gali in dispute.

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

Perusal of the written statement filed by the appellants-defendants would reveal that they have not raised the issue of suit filed by Kashmiri Lal being barred under Order 2 Rule 2 of the Code. On the contrary, plea raised by the appellants is that the present suit is not maintainable as earlier suit for injunction regarding the same subject matter had already been dismissed.

The trial court framed issue No. 3 to the following effect:-

“Whether the suit of the plaintiff is not legally maintainable in the present form?OPD”

The said issue was answered against the appellants by holding that the defendants neither have adduced any evidence nor pressed this issue during the course of arguments.

Perusal of records of the trial court would reveal that plaint of the suit titled “Kartaro Devi and another vs. Dalbir Chand and others” was not produced in the present proceedings. However, some other documents of that litigation are a part of records. In absence of the appellants having

raised a specific plea that suit filed by Kashmiri Lal is barred under Order 2 Rule 2 of the Code and plaint of the earlier suit being not a part of records, it is difficult to accept contention of the appellants that consistent findings recorded by the courts are liable to be set aside on the additional factual and legal plea sought to be raised for the first time in regular second appeal. In this view of the matter, contention raised by counsel for the appellants is not tenable.

No other point has been raised.

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

(Rekha Mittal)
Judge

30.7.2018
paramjit

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