

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2801 of 2017 (O&M)
Date of Decision: December 13, 2018

Vikram alias Pardeep alias Guddu & others

...Appellants

Versus

Mukesh Kumar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Raman K. Sharma, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.18021-C of 2018

Prayer in the application is for restoration of the
aforementioned Regular Second Appeal, which was dismissed for non-
prosecution on 13.11.2018.

For the reasons mentioned in the application, which is
supported by an affidavit, order dated 13.11.2018 is recalled and the appeal
is restored to its original number.

Application stands allowed.

RSA No.2801 of 2017

Appellant-defendants have not been successful in defending the
suit for injunction, whereby they have been restrained from obstructing in
raising construction upon the property in dispute shown in blue and red
colour in the site plan and in the alternative, mandatory injunction in case

they succeeded in opening any window, ventilator, jungla, drain or any other aperture in the western wall mark X1 to X4 on the first floor towards the property marked by letters ABCDEF.

It was alleged that father of the plaintiff Thaan Singh executed a registered Will dated 20.12.1982 in favour of the plaintiff with regard to the suit property, who died on 08.04.1988. In pursuance to the request made to the concerned Municipal Committee, Rewari, municipal plan bearing No.157 dated 10.02.2009 was passed, whereby the plaintiff was given permission to raise new construction. Defendants extended threat of opening window, ventilators, grill, drain and aperture towards the property of the plaintiff shown by mark ABCDEF and also collected the building material. It was further alleged that the property of the defendants is abutting to the East side of the property of the plaintiff and in case they succeeded in opening drain, windows, ventilators and aperture towards the wall mark X1 to X4 on the western side on the property belonging to the plaintiff, the plaintiff would suffer difficulty in raising his upper floor and the privacy would be hindered.

Defendants opposed the suit and denied the ownership of the plaintiff, much less suppression of writing dated 22.05.1941 between the predecessor-in-interest of the appellant-defendants and the plaintiff. An attempt was made to give pedigree table by denying the ownership of the plaintiff.

Plaintiff, in support of the averments, examined 12 witnesses and brought on record the following documents:-

Ex.PW1/A	Affidavit of Devender Kumar Yadav tendered in his examination in chief.
Ex.P-1	Site plan
Ex.PW2/A	Affidavit of Shiv Kumar tendered in his examination in chief.
Ex.P-2 to Ex.P-5	Photographs
Ex.P-6 to Ex.P-9	Negatives
Ex.P-10	Bill of photographs
Ex.PW3/A	Affidavit of Chaturbhuj tendered in his examination in chief.
Ex.P-11	Will vasika No.83 dated 20.12.1982
Ex.P-12	Copy of register of vasika Navish of 1982
Ex.PW4/A	Affidavit of Rameshwardass tendered in his examination in chief.
Ex.PW5/1 to Ex.PW5/6	Site plans
Ex.PW5/7	Copy of register of building applications
Ex.PW6/A	Affidavit of Girish Kumar tendered in his examination in chief.
Ex.PW6/1 to Ex.PW6/9	Photographs
Ex.PW6/10 to Ex.PW6/17	Negatives and CDs of photographs
Ex.PW7/A	Affidavit of Pankaj Kumar tendered in his examination in chief.
Ex.PW8/A	Affidavit of Ved Prakash tendered in his examination in chief.
Ex.PW8/1	Copy of contempt application
Ex.PW9/1	Copy of reply to contempt application.
Ex.PW10/1	Site plan
Ex.PW11/1	Special power of attorney
Ex.PW11/2	Death certificate of Thaan Singh
Ex.PW11/3	Death certificate of Kailash Chand Sharma
Ex.PW11/4	Death certificate of Satish Chand
Ex.PW11/5	Report of local commission
Ex.PW11/6	Rough site plan
Ex.PW11/7	Notice
Ex.PW11/8	Spot memo
Ex.PW11/9	Receipt
Ex.PW11/10	Copy of application dated 9.9.2009
Ex.PW11/11	Copy of application dated 11.4.2010
Ex.PW12/A	Affidavit of Shiv Kumar tendered in his examination in chief.
Ex.PW12/1 to Ex.PW12/5	Photographs
Ex.PX-1	Death certificate of Thaan Singh

On the other hand, the defendants examined six witnesses and brought on record the following documents:-

Ex.DW1/A	Affidavit of Harish Aneja tendered in his examination in chief.
Ex.DW1/1 & Ex.DW1/2	Photographs
Ex.DW1/3	CD
Ex.DW1/4	Receipt of Aneja Photo Studio
Ex.DW2/A	Affidavit of Narender Kumar tendered in his examination in chief.
Ex.DW2/1	Site plan
Ex.DW3/A	Affidavit of Santosh Kumar tendered in his examination in chief.
Ex.DW3/1	Copy of register
Ex.DW3/2	Document in urdu
Ex.DW3/3	Its Hindi translation
Ex.DW4/A	Affidavit of Om Parkash tendered in his examination in chief.
Ex.DW4/1 to Ex.DW4/9	Photographs
Ex.DW4/10 & Ex.DW4/11	CDS
Ex.DW4/12	Receipt of Sahgal Photo Studio
Ex.DW5/1	Site plan
Ex.DW5/2	Existing plan
Mark-DX to Mark-DX/3	Photographs

Mr. Raman K. Sharma, learned counsel representing the appellant-defendants submitted that the suit property was accorded the Municipal House Tax No.2133, whereas the injunction granted is beyond suit property and, therefore, there is gross illegality and perversity. Courts below have gravely erred in noting that mark-A in Ex.P1 was a Baithak on a vacant plot owned and possessed by the defendants. The plaintiff miserably failed to prove the photographs of the property with the site plan and in such circumstances, the injunction ought not to have been granted. The defendants examined DW-3 Santosh Kumar Gupta, real son of late Chand Lal Deed Writer with regard to the compromise, but the same has

erroneously been ignored.

I have heard the learned counsel for the appellant-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellants, for, by taking into consideration the admission of the agreement, illegality cannot be permitted to perpetuate. Defendants failed to prove that they opened the window, ventilators, drain and aperture as per the existing bye-laws, whereas the plaintiff had a sanctioned plan, who wanted to raise the construction on the second floor. Photographs clearly show that mori, aperture, window and ventilators were opened in the property of the defendants towards the side of the property of the plaintiff. The execution of the document/agreement dated 22.05.1941 has not been proved as the thumb impression of Chhote Lal, grand-father of the plaintiff remained unproved, neither any witness was examined.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact and law, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 13, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No