

Regular Second Appeal No.4823 of 2017 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4823 of 2017 (O&M)
Date of Decision: November 27, 2018

Mukesh Kumar

...Appellant

Versus

Jagshir Kumar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Ashok Singla, Advocate &
Mr.Aakash Singla, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.12801-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 46 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4823 of 2017

The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby the appellant-plaintiff has not been successful in claiming the following relief:-

“Suit for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the plot shown as ABCD in the site plan attached with the plaint surrounded as under:-

East (54 feet) : Property of the defendants

West (49 feet) : Panchayat Land

North (28 feet) : Street
South (21 feet) : Property of railway
situated within the municipal limits of Mandi Bariwala, Tehsil
and District Sri Muktsar Sahib.

AND

Suit for Mandatory Injunction directing the defendants to close the doors/gates at point XY and YZ shown in the site plan attached with the plaint with costs.”

It has been pleaded that vide sale deed dated 15.07.2011, the plaintiff had become owner of the property. The defendants had been in possession of the property towards the eastern side of the property as reflected in the site plan. Owing to absence of the plaintiff and place of posting, the defendants forcibly opened the doors and gates shown at points XY and YZ in the site plan.

The defendants contested the suit by denying the site plan and treated the plot in dispute as a street.

In order to lend support to the aforementioned averments, plaintiff brought on record sale deeds Ex.P1, Ex.P2, site plan Ex.P3 and also examined some witnesses to establish that he was the owner. Even the Local Commissioner appointed had submitted his report Ex.PX. Defendants also led evidence to that effect.

The trial court refused the injunction by holding that the plaintiff had a separate and efficacious remedy to take the possession in accordance with law holding him to be owner as the suit property was nothing but an open space. Appeal taken before the Lower Appellate Court was also dismissed.

Mr. Ashok Singla, learned counsel appearing on behalf of the appellant-plaintiff submitted that the findings of fact and law arrived by the

Lower Appellate Court are totally off the record and against the report of the Local Commissioner as while dismissing the appeal treated the open space as a street. No doubt, the demarcation report would not have been a clincher for the purpose of injunction, but the finding aforementioned was not sustainable as the boundaries described in the sale deed tallied with the site plan. The photographs shown during the course of hearing also reflected that two gates were erected by the defendants causing hindrance in the plot owned by the plaintiff which had certain depressions.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel.

In a relief as sought, it is obligatory upon the plaintiff to prove the ownership through the assistance of the Local Commissioner to get the plot demarcated. Local Commissioner has also not demarcated the land, who had gone to the spot and prepared the rough site plan. The findings by the trial court while rejecting the injunction are the correct one, but the Lower Appellate Court should not have treated the open space as a passage. It is contrary to the report of the Local Commissioner. Plaintiff would have a separate remedy as noticed by the trial court. The findings of fact and law rendered by the Lower Appellate Court would not come into the way of the plaintiff in case such remedy is taken being obiter. The relevant findings rendered by the trial court while rejecting the injunction read thus:-

“From the report of the local commissioner as well as photograph and site plan relied upon plaintiff as well as defendants, the suit property is nothing but an open place which is adjacent to the plot of defendants. From the photograph, it stands substantiated that gate of defendants open towards this site. The title of the suit property is not in

dispute however, since the plaintiff could not prove its possession over it and he has further failed to prove that the street which comes to his plot as per site plan Ex.P3 ends here. Since the plaintiff has failed to prove his possession over the suit property, therefore, no injunction order can be passed in his favour. Besides this, the plaintiff has a separate and efficacious remedy to take possession of the suit property and thus suit of the plaintiff is also not maintainable as per section 41(h) of the Specific Relief Act.”

With the aforementioned observations, while upholding the findings on other issues, the appeal is disposed of.

November 27, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No