

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision-02.08.2018

1. RSA No.5807 of 2017(O&M)

Bhupinder Singh Sandhu	... Appellant
Versus	
Surjan Ram	... Respondent

2. RSA No.6152 of 2017(O&M)

Bhupinder Singh Sandhu	... Appellant
Versus	
Surjan Ram	... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.D.Sharma, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, RSA No.5807 of 2017 titled Bhupinder Singh Sandhu Vs. Surjan Ram and RSA No.6152 of 2017 titled Bhupinder Singh Sandhu Vs. Surjan Ram are being disposed of. Since both the appeals have arisen from the same impugned judgments and decrees, therefore, facts are being culled out from RSA No.5807 of 2017.

[2]. Plaintiff/appellant has preferred these regular second appeals against the concurrent judgments and decrees passed by the Courts below.

[3]. Plaintiff/appellant filed a suit for permanent injunction, restraining the defendant or his agent, attorney, employee or

worker from interfering in the peaceful possession of the plaintiff over the suit land by making rasta in the property of the plaintiff and from demolishing the boundary wall of the plaintiff in the land as shown in the headnote of the plaint. Plaintiff pleaded that he is NRI and had purchased the land from Nirmal Singh vide sale deed dated 02.03.2007. Mutation was also sanctioned in his favour. On 06.05.2010, defendant tried to interfere in the suit land for making rasta and also tried to demolish the boundary wall. The situation was timely averted.

[4]. In the written statement filed by the defendant, it was asserted that the water channel linked from tubewell was in existence. The existence of tubewell was pleaded and plaintiff had tried to encroach upon the area of water channel. The rasta linked to the properties of the plaintiff and defendant was different. Defendant was owner of the land shown in green colour. Water channel was depicted by blue and red colour. Defendant also set up a counter claim for permanent injunction, restraining the plaintiff from encroaching upon the area of water channel shown in red colour in the site plan at point 'C to D' belonging to the counter claimant. The land of the counter claimant was shown in green colour in the site plan.

[5]. Both the parties went to trial on definite issues and thereafter, led their respective evidence. Plaintiff examined Balwinder Kaur as PW 1. No other PW was examined. On the

other hand, defendant got examined himself as DW 1 and Bhupinder Singh as DW 2. With the aforesaid evidence, both the parties closed their respective evidence.

[6]. Issues No.1 and 6 were jointly considered by the trial Court. Trial Court on the basis of evidence led by the parties, decided both the issues against the plaintiff and in favour of the counter claimant. In view of findings recorded under issues No.1 and 6, other issues No.2, 3, 4 and 5 were decided in favour of the counter claimant and against the plaintiff. Issues No.7, 8, 9 and 10 were interconnected. The onus to prove these issues was upon the plaintiff, but the plaintiff did not lead any evidence to discharge the onus and as such, these issues were also decided against the plaintiff. Resultantly, suit of the plaintiff was dismissed and counter claim filed by the defendant was allowed vide judgment and decree dated 17.07.2013. Judgment and decree of the trial Court was upheld by the Lower Appellate Court vide judgment and decree dated 25.10.2016.

[7]. I have heard learned counsel for the appellant.

[8]. Perusal of the record would show that the dispute was in respect of point 'C to D' as shown in Ex.D1 as produced by the defendant as well as site plan Ex.P3 as produced by the plaintiff. In order to prove the existence of wall at point 'C to D', the plaintiff was under legal obligation to prove the onus of issue No.1. The evidence led by the parties would show that the

plaintiff has not led any such evidence to prove existence of any wall at the disputed point in question. On the other hand, defendant has proved the existence of water channel at the disputed point. Further cross examination of PW 1 Balwinder Kaur would show that the witness has admitted the correctness of Ex.D1 viz-a-viz the land belonging to the parties. In the cross examination of the aforesaid witness, it was found that Surjan Ram was irrigating his land shown in green colour in the site plan Ex.D1 from the tubewell and there was no wall at point 'C to D' as per site plan Ex.D1. The validity of site plan Ex.D1 was admitted by PW 1 in her cross examination. Perusal of Ex.D1 would show its correctness which has also been admitted by PW 1 in her cross examination. The existence of water channel at point 'C to 'D was proved which was interconnected to the agriculture land of defendant Surjan Ram which was shown in green colour in the site plan. The tubewell was shown in blue colour in the site plan. It was admitted by PW 1 that Surjan Singh was irrigating his land from the tubewell as shown in blue colour in the site plan Ex.D1. As per version of the plaintiff, water channel existed at point 'C to D' because if the existence of the water channel was denied then the fact admitted by the witness of the plaintiff i.e. PW 1 would be falsified. The admission to the effect that defendant Surjan Ram was irrigating his land from the said tubewell would go in a way to falsify the case of the plaintiff. Testimony of PW 1 was clinching

point in the aforesaid controversy. The aforesaid factual position was also corroborated by DW 1 and DW 2 in their testimonies.

[9]. The entire case revolved around factual matrix which has come to fore in favour of the defendant. Against the decree of the trial Court, dismissing the suit of the plaintiff and decreeing the counter claim of the defendant, two appeals were filed by the plaintiff before the Lower Appellate Court and both the appeals were dismissed. That is how, two regular second appeals have been filed in this Court.

[10]. The factual evidence has been appreciated by both the Courts below. The appreciation of evidence by the Courts below has not been found to be on account of any misreading of evidence or suffered with any perversity. No law point worth consideration is involved in the present appeals and the same are accordingly dismissed in *limini*.

[11]. Since main appeals have been dismissed on merits, therefore, pending miscellaneous applications are not necessary to be decided and the same are accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

02.08.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No