

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.2627 of 1988 (O&M)

Date of decision:09.04.2019

Norata Ram (deceased) through LRs and others

... Appellants

Vs.

Bhagtu Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.B.Goel, Advocate
for the appellants.

Mr. Shubham Saroha, Advocate for
Mr. Shishpal Laker, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court reversing the findings of the trial Court partly decreed the suit of the appellant-plaintiffs.

The plaintiffs sought the injunction against the defendant from constructing the wall AB as shown in the site plan Ex.P2 and from forcible possession and interference. It was alleged that plaintiffs have been in possession since time of their ancestors. They were in service and posted at Ambala City and Shahabad. Bhagtu Ram, defendant no.1 was residing at village Tigri, where the suit property was situated, and wanted to take forcible possession of the suit property.

The defendant opposed the suit and stated that he was owner in possession of the suit property, whereas, the plaintiff never remained in possession of it. He also installed one hand pump and constructed one room without roof, when wanted to lay roof could not do so as the plaintiffs obtained the stay order from the Court.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are owners in possession of the disputed property?OPP*
- 2. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 3. Whether the suit is not maintainable in the present form?OPD*
- 4. Relief.”*

The plaintiffs examined Labh Singh as PW1, S.K.Goel as PW2, Kala Ram as PW3, Barkha Ram as PW4, Punnu Ram as PW5 and Ravi Dutt as PW6, whereas, the defendant examined Gurdial Singh as DW1, Balwant Singh as DW2, Bachna as DW3, Ram Chander as DW4, Bhagtu as DW5 which showed that defendant had been in possession of the suit property.

The trial Court on the basis of the report of the Local Commissioner and his cross-examination, much less, by relying upon the statement of Punnu Ram, who is none else but brother of the defendant, held that there was room and courtyard. There was also place for ingress and outgress and decreed the suit by injunctioning the defendant from

constructing the wall at point AB and also by taking possession of the suit property with a further direction to remove the construction raised by him on the site in dispute as per statement dated 1.5.1984. The Lower Appellate Court dismissed the suit with regard to ABDE reflected in the site plan Ex.P2 but maintained the suit only with regard to the house consisting of one room and a court yard.

Mr. C.B.Goel, learned counsel appearing on behalf of the appellants submitted that finding of the Lower Appellate Court is totally perverse as it failed to notice the site plan Ex.P2 in correct perspective. The scrutiny alleged basically was farcical as reasoning assigned for decretal of the suit in part was that plaintiffs could enter their premises from the side of the property of Punnu Ram, whereas, Punnu Ram had already constructed his house and the site plan ABCDE reflected that the plaintiffs had an access but the defendant wanted to block the area by raising the construction at point AB as he had rooms towards Western side. The street on the South side cannot be construed as in between there is property of Punnu Ram who was already occupying the same and there is no passage in between. The site plan Ex.PW6/A prepared by the Local Commissioner is also testimony of Ex.P2.

Per contra, Mr. Shubham Saroha, learned counsel for the respondent submitted that the Lower Appellate Court being the last Court of fact and law examined the evidence thread bare and found there a street toward the South West side of the property of Punnu Ram which had been in use and the plaintiffs can also use the same.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arise for adjudication of the present appeal:-

“Whether the judgment and decree of the Lower Appellate Court is result of gross mis-reading of the site plan and evidence on record?”

The Lower Appellate Court by giving the finding in para 10 on scrutiny of the documents found that due to construction of room by the defendant, the passage towards the street in North East had been blocked and in case the boundaries of their houses is checked from the plaint itself, there was street in the South West of the house which Punnu Ram had been using which can also be used by the plaintiffs but failed to notice the fact that Punnu Ram is none else but brother of Bhagtu Ram, defendant and has been in possession of the suit property from point AB.

There is gross misreading of the testimony, in such circumstances, the decree cannot be modified as it would entail predicament of the plaintiff to have access from the portion South West with the property which is constructed one. Thus, there was no passage shown towards the Southern side of the property. Ex.PW6/A also acknowledged the factual aspect at site and in tandem with Ex.P2.

I am of the view that the Lower Appellate Court being the last Court of fact and law ought to have noticed and observed both the site plans but only referred to Ex.P2. The finding of fact and law, in my view, is

totally erroneous. The observation of the Lower Appellate Court in partly decreeing the suit is hereby set aside. The suit is decreed in toto. The aforementioned Substantial Question of Law is answered in favour of the appellants and against the respondent.

Resultantly, the regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

April 09, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No