

RSA No.1040 of 1998 (O&M)

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

RSA No.1040 of 1998 (O&M)

Date of decision: 08.07.2019

Joginder Ram

.....Appellant

versus

Smt. Krishni and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Harveen Kaur, Advocate,
for the appellant.

Mr. H.S. Dhandi, Advocate,
for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through this Regular Second Appeal, defendant has laid challenge to judgment and decree of the appellate Court dated 17.02.1998, whereby suit of the respondents-plaintiffs for permanent injunction was decreed by setting aside judgment and decree dated 18.02.1997 of the trial Court, dismissing their suit.

Briefly, respondents filed a suit for permanent injunction to restrain the appellant-defendant from dispossessing or causing any hindrance in their '*bara*' (courtyard) situated in Village Maghar Sahib, Tehsil and District Patiala, allotted to them by the proprietors of the Village to prepare earthen pots. Respondents-plaintiff were also using the said courtyard for tethering their cattle, who belonged to '*Kumhar*' community,

whereas appellant-defendant belong to different community i.e. '*Jhiwar*'

RSA No.1040 of 1998 (O&M)

and had no right, title or interest in their courtyard, but was intending to illegally dispossess them from the same.

Upon notice, defendant contested the suit.

After holding trial, suit of the respondents-plaintiff was dismissed by the trial Court vide judgment and decree dated 18.02.1997.

Being aggrieved, plaintiff filed appeal, which was accepted in toto vide impugned judgment and decree dated 17.02.1998.

Learned counsel for the appellant *inter alia* contends that earlier suit filed by the appellant qua same '*bara*' was decreed vide judgment Ex.D1. Respondents-plaintiff had no right, title or interest in the said '*bara*'. The appellate Court has erred in setting aside the well-reasoned judgment of the trial Court in favour of appellant-defendant, arriving at a wrong conclusion that boundaries of the courtyard which were subject-matter of judgment Ex.D1 in favour of appellant-defendant, were altogether different from the '*bara*' in dispute.

On the other hand, learned counsel for the respondents-plaintiff contends that judgment Ex.D1 was procured by the appellant-defendant *ex parte* without impleading respondents-plaintiff as party. Therefore, same had no binding effect upon them. Appellate Court has rightly found that both the courtyards which are subject-matter of present suit and that of judgment Ex.D1 were altogether different properties by comparing their boundaries.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

RSA No.1040 of 1998 (O&M)

courtyards.

Boundaries of courtyard which was subject-matter of judgment Ex.D1 are as follows: -

North : Land of Surjan;
South : Street;
East : Phirni;
West : '*Bara*' of Wadhawa Ram

Boundaries of '*bara*' in dispute are as under: -

North : '*Bara*' of Sukh Ram, Kirpal Singh, Sukhdev Singh etc.;
South : '*Bara*' of Bhajan Singh, Gurdial Singh, Dharam Pal Singh and street;
East : '*Phirni*';
West : House of Sadhu Ram

From the above factual position, it is evident that in judgment Ex.D1, appellant-defendant himself has shown property of Wadhawa Ram on Western side of his courtyard. Therefore, it is well-established that property in judgment Ex.D1 was altogether different from the courtyard claimed by respondents-plaintiff, maybe adjoining to each other.

That apart, appellant-defendant in his cross-examination has admitted that forefathers of plaintiffs were given plot measuring 10 biswas in the Village for preparing earthen pots, which was further inherited by respondents-plaintiff from their father and they were in possession of the same. Above admission of appellant-defendant makes it abundantly clear that respondents-plaintiff were in possession of the disputed courtyard.

I have gone through the impugned judgment of the First Appellate Court and find no ambiguity or illegality in the same.

RSA No.1040 of 1998 (O&M)

Resultantly, this appeal being devoid of any merit, is dismissed.

July 08, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.