

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4146-2019 (O&M)

Date of decision: 06.09.2019

Maninder Pal Singh

..... Appellant

Versus

Manjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Parveen K. Kataria, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this regular second appeal along with application (CM-11493-C-2019) under Order 41 rule 27 read with Section 151 CPC, for leading additional evidence, unsuccessful plaintiff-appellant has laid challenge to judgment and decree dated 07.05.2019 of lower Appellate Court, affirming judgment and decree of trial Court dated 03.02.2017, whereby his suit for permanent injunction was dismissed.

Briefly, appellant-plaintiff claiming his ownership and possession over house measuring 100 Sq. Yards bearing No. 521 (M.C. No. 591, B-37) constructed in Khasra No. 1206, Khata No. 34/36 as per jamabandi for the year 1985-86, situated in village Dugri known as Nirmal Nagar, Tehsil and District Ludhiana, fully detailed in the head note of judgment of trial Court, filed a suit for permanent injunction against the respondents, restraining them from demolishing/damaging the same.

Upon notice, respondents appeared and contested the suit tooth and nail. From the pleadings of parties, necessary issues were framed. Appellant-plaintiff was afforded several opportunities even subverting the codified provisions of Civil Procedure Code (CPC) including last one, even subject to payment of costs of ₹500/-, but he did not lead any evidence. Therefore, finding no option, learned trial Court non-suited the appellant vide judgment and decree dated 03.02.2017.

Being aggrieved, appellant-plaintiff approached lower Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 07.05.2019.

Relying upon judgment of Apex Court in **Rafiq and another Vs. Munshi Lal and another, 1981 AIR 1400**, learned counsel for the appellant *inter alia* contends that both the Courts below have failed to appreciate that suit of the appellant could not have been dismissed for the fault of his counsel. The appellant may be granted one opportunity to lead his evidence.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds that instant regular second appeal merits dismissal for the reasons to follow:

One of the pleas taken by the appellant that he was not aware of legal procedure. However, the said plea is not available to him, in view of the settled proposition of law that “ignorance of law is no excuse”. The appellant did not annex affidavit of Advocate or any supportive document, in support of his contention that his counsel kept him in dark and did not pursue his case diligently, on account of which

appellant was erroneously non-suited. Even he did not produce any proof as to whether he had ever made any complaint against negligence of his counsel before the Bar Council, concerned. In the absence of any such action on his part, the above plea of appellant can safely be termed as concocted and false.

A judicial notice of the fact is taken that since last several decades i.e. more than 4-5 decades, it has become a routine practice being adopted by every litigant that whenever any adverse Court order comes against him, he puts entire burden upon his counsel, but the fact remains that no Advocate put his career at stake by conducting the case of his client negligently. From this angle also, plea of appellant has to be turned down.

By this time, it is well settled proposition of law that it is bounden and fundamental duty of a litigant to pursue his case diligently and not negligently. Thus, it was bounden duty of the appellant to remain in constant touch of his counsel to pursue his case during trial, but he kept on sleeping in a great slumber and awoke, when was genuinely non-suited by the trial Court.

The facts and circumstances of the judgment relied upon by learned counsel for the appellant are quite distinguishable from the facts of instant case, therefore, no benefit whatsoever of the same can be given to the appellant.

No question of law, much less substantial, has been raised in the appeal. Hence, the same is held not maintainable.

I have gone through judgments of both the Courts below and

find no illegality or perversity in the same.

The instant regular second appeal, being meritless, is dismissed.

September 06, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No