

RSA No.1397 of 2011

1

203

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.1397 of 2011

Date of Decision: 21.05.2019

Jaswant Singh

.....Appellant

versus

Raksha Rani and others

.....Respondents

**CORAM HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present Mr.Sanjiv Gupta, Advocate for the appellant.  
Mr. Abhishek Arora, Advocate for respondent no.1.  
\*\*\*\*

**AMOL RATTAN SINGH, J (ORAL)**

By this appeal the appellant (plaintiff in the suit) challenges the concurrent findings of the learned Courts below, dismissing his suit by which he sought a decree of permanent injunction restraining the respondents herein (defendants) from demolishing the boundary wall erected on the first floor of the house of the plaintiff, the address of which is fully described in the head note of the plaint as also in the judgment of the learned trial Court.

The contention of the appellant in his suit was that the house had been purchased by his mother vide a registered sale deed dated 27.02.1958 from its original owner; and thereafter construction was raised on the first floor of the house by the appellant/plaintiff himself, upon him having inherited the house vide a registered will executed in his favour on 20.04.1993, by his mother.

The suit was resisted by the respondent/defendants essentially on the ground that earlier also a wall had been constructed by the plaintiff

which had been demolished by the Municipal Authority and that the plaintiff was in fact encroaching upon the (first floor) area of the defendants.

Upon the pleadings of the parties, the following issues were framed by the trial Court:-

- 1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP*
- 2. Whether the suit of the plaintiff is not maintainable?OPD*
- 3. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD*
- 4. Relief.*

Upon evidence led by respective parties, that court came to the conclusion that even during his cross examination the appellant/ plaintiff had admitted that he had never got the site plan as had been annexed with his plaint, sanctioned from the Municipal Authority; and that the wall earlier constructed by him had been demolished by the Municipal Corporation.

He had further admitted that even the construction raised thereafter was not as per any sanctioned plan.

He had also admitted in his cross examination that bricks and stones and debris was lying on the residential area of the respondent/defendants.

That Court also found that though the plaintiff had submitted that his house was constructed on an area of 112 ½ (one hundred twelve and a half) sq.yards, he could not prove that by way of any documentary evidence led.

The learned trial Court further found that even the building expert examined by the appellant/plaintiff as PW4, had admitted in his cross

examination that the wall raised by the plaintiff was not straight, and was infact bending towards the house of respondent/defendants at a particular point.

In view of all the aforesaid findings, the suit of the plaintiff was dismissed, though he had also adduced evidence to try and show that the respondent/defendant was a quarrelsome lady who had been convicted for the commission of an offence punishable under Section 399 of the IPC.

It is to be noticed that the respondent/defendant had also examined an official from the Municipal Corporation, i.e DW3, who had also testified to the effect that the appellant/plaintiff had tried to encroach upon the area of the respondent/defendants by raising a wall, which had been not allowed by the Corporation.

The first appeal filed by the appellant herein before the learned Additional District Judge, Patiala, was also dismissed, recording essentially the same finding.

On the same date that the appeal was dismissed, an application filed before that Court by the appellant under Order 41 Rule 27 CPC was also dismissed. Vide that application, the applicant-appellant had sought to lead, by way of additional evidence, a site plan stated to have been sanctioned by the Municipal Corporation.

The dismissal of that application vide the said order (copy Annexure P-4 with the present appeal), was on the ground that there was no reason given by the applicant/appellant – plaintiff to satisfy the Court as to why he could not produce that evidence before the trial Court itself.

Before this Court, learned counsel for the appellant though has

tried to submit that the findings of the learned Courts below are wholly perverse, he has not actually been able to show in any manner as to how that contention is substantiated in the face of what has been recorded by the trial Court, as regards admissions made by the appellant in his cross examination as also the admission made by the expert that he examined.

Hence, I would find absolutely no reason to interfere in a second appeal, in concurrent findings of fact holding that the wall constructed by the appellant was actually encroaching upon the house of the respondent/defendant.

As regards the order passed by the learned appellate court dismissing the application under Order 41 Rule 27 CPC, other than the fact that the said evidence was not led by the appellant before the trial Court even though the said sanctioned site plan is stated to have been in existence even then, on the merits thereof, learned counsel for the respondent/defendants has submitted that the said site plan was actually one pertaining to the ground floor of the house of the appellant/plaintiff and consequently no sanctioned site plan as regards the first floor, on which the boundary wall in question has been raised, was sought to be produced, to show that the boundary wall was as per sanction awarded by the Corporation. He submits that, therefore, the said document would actually be relevant to the suit.

Learned counsel for the appellant/plaintiff has not been able to refute that contention.

That being so, I see no reason to entertain this appeal, which is

consequently dismissed; with parties however left to bear their own costs as regards the appeal.

21.05.2019  
mamta

(AMOL RATTAN SINGH)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |