

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) RSA No. 1374 of 2016 (O&M)
Date of decision : 29.7.2019

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Sanjeev Kumar

.....Appellant

vs.

Bera Ram and others

.....Respondents

2) CR No. 8121 of 2016 (O&M)

...

Sanjeev Kumar

.....Petitioner

vs.

Bera Ram and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Ankush Chaudhary, Advocate
Legal Aid counsel for the appellant in RSA-1374- 2016
and for the petitioner in CR-8121- 2016

Mr. J.S. Lalli, Advocate for respondent No.3
in RSA-1374-2016 and CR-8121-2016

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H. S. Madaan, J.

By this common judgment, I intend to dispose of two cases
i.e. bearing RSA-1374-2016 titled as 'Sanjeev Kumar vs. Bera Ram
and others' and CR-8121-2016 titled as 'Sanjeev Kumar vs. Bera

Ram and others'.

In nutshell, facts of the case are that plaintiff Bera Ram and his wife Smt. Botti Devi, had brought a suit against defendants Ishar Singh and his son Sanjeev Kumar, besides Municipal Corporation, Manimajra, Chandigarh, for grant of permanent injunction, restraining defendants No. 1 and 2 or persons claiming under them, from digging and making basement in their four storey constructed House No. 206/1, Street No. 6, Manimajra Town, Chandigarh, adjoining to the house of plaintiffs. In addition to that praying for grant of mandatory injunction directing defendants No. 1 and 2 to stop the illegal digging and making of basement in their property and further issuance of direction to defendants No. 1 to 3 to fill up the dug portion with earth upto the ground level.

As per case of the plaintiffs, they had purchased House No. 60, Street No.6, Manimajra Town, U.T., Chandigarh, vide a registered sale deed and presently about 15 members of plaintiff's family are residing in the said house; that towards Eastern side of the house is situated House No. 206/1, belonging to defendants No. 1 and 2 Ishwar Singh and Sanjeev Kumar, where they were residing. The front of house of defendants is only 7' wide and the building is constructed upto 4 storeys. Of the late, defendants No. 1 and 2 started digging basement in their house for construction of another floor for commercial purposes. House of plaintiffs and house of defendants No. 1 and 2 share a common basement wall. The construction of basement by defendants No. 1 and 2 would not be

feasible as it will not be able to sustain the load of both the houses of the plaintiffs and defendants No. 1 and 2 and allowing such construction would expose the house of the plaintiffs to the risk of collapse of entire building; that the plaintiffs had filed a similar suit against defendants earlier, where the present defendants had given a statement that they would not dig the basement in the suit property; that in view of the said statement, the Court directed that parties would be bound by their statements and the suit was dismissed having become infructuous. However, despite the undertaking, they did not stop the work of construction of basement in their house and rather they started doing it from rear entrance of the house. On a complaint made by the plaintiffs, defendant No. 3 had put a truck load of debris in front of the house of the defendants in order to fill up the illegal construction of the basement. Defendant No.3 had observed that there is apprehension of collapsing of the house of the plaintiffs on account of digging of the basement by the defendants. The matter was reported in the local newspapers as well. The police officials visited the residence of the parties and directed the defendants to stop the illegal work but once the matter cooled down, the defendants started digging up the basement again. The matter was reported to the Municipal Corporation, Manimajra, Chandigarh on 4.3.2013 and officials of defendant No.3 had visited the place. The defendants stopped the digging of the basement but again they illegally started their work later on. Since such defendants were adamant, not to stop the illegal construction, the plaintiffs had brought the suit in question.

On notice, defendants put in appearance. Defendants No. 1 and 2 filed a joint written statement, raising various legal objections, challenging maintainability of the suit, locus standi of the plaintiffs to bring it, accusing plaintiffs of concealment of true and material facts from the Court. On merits, such defendants contended that suit of the plaintiffs for permanent injunction and mandatory injunction had already been dismissed by the Court of Civil Judge (Junior Division), Chandigarh and now the plaintiffs are trying to mislead the Court. After the said decision, the defendants had not carried out any work of digging and construction. The only work so done by the defendants was to repair the pipes in their house which was done in the month of February 2013. Refuting the remaining allegations, such defendants prayed for dismissal of the suit.

In the written statement filed on behalf of defendant No.3, it has also taken up various legal objections with respect of maintainability of the suit and non-service of mandatory notice under Section 396 of the Punjab Municipal Corporation Act, 1976, against the respondent-defendant before filing of the suit. On merits, such defendant submitted that field staff of the office of the answering defendant had visited the site in question on 8.3.2013 and shutter of the basement was found to be locked and on account of the same proper action could not be taken at that time. Thereafter, the office of the answering defendants had issued notice under Section 13 (vi) of the Chandigarh Administration (Erection and Re-erection of Buildings), Rules 2006, for villages in Municipal area of Municipal

Corporation, to defendant No.1 regarding the construction of illegal basement and 4th floor in their house, vide memo No. 11 dated 12.3.2013; that the answering defendant had taken all the necessary action and would continue to do so, to stop and undo the illegal construction so raised by defendants No. 1 and 2 in accordance with the existing rules and laws; that defendant No.1 was called on 15.3.2013 pursuant to the issuance of the notice in the office of Additional Commissioner, MC, Chandigarh at about 11.30 A.M. to explain his stand regarding the raising of illegal construction by him. However, defendant No.1 neither appeared in person nor submitted any reply or building plan in the office of the answering respondent. In the end such defendant also prayed for dismissal of the suit.

The plaintiffs filed replications to the written statements of defendants No. 1 and 2, controverting the allegations therein, whereas reiterating the averments in the plaint.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to decree of Permanent Injunction as prayed for ? OPP
2. Whether the plaintiff is entitled for decree of Mandatory Injunction as prayed for ? OPP
3. Whether the plaintiff has concealed the material facts from this Court? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Relief.

Parties were afforded opportunities to lead their respective evidence.

In support of their case, plaintiff No.1 himself appeared in the witness box as PW-1 and tendered into evidence his affidavit alongwith copy of sale deed Mark P-1, orders dated 14.3.2013 and statement of defendants as Exhibits P-2 and P-3, respectively, complaint Exhibit P-4, cutting of newspaper as Exhibit P-5, visiting of police officials at spot as Mark P-6, clipping of newspaper as Exhibit P-7, thereafter closed the evidence.

In rebuttal, defendants examined Sanjeev Kumar as DW-1, besides tendering in evidence his affidavit and letter dated 15.3.2013 as Exhibit PD, and closed the evidence.

After hearing the arguments, the trial Court decided issue No. 1 against the plaintiffs and issue No.2 was decided in favour of the plaintiffs, whereas issues No. 3 and 4 were decided against the defendants.

In view of the findings of the trial Court, suit of the plaintiffs was partly decreed to the effect that since illegal construction had already been raised by defendants No. 1 and 2 in the form of basement, therefore, no decree for permanent injunction could be granted. However, a decree for mandatory injunction was granted to the plaintiffs directing defendants No. 1 and 2 to stop any further illegal digging or making of the basement if any, and also issued directions to defendants No. 1 to 3 to fill up the basement upto the

ground level. This was so done vide judgment and decree dated 16.10.2015, passed by Civil Judge (Junior Division), Chandigarh.

Defendant – Sanjeev Kumar felt aggrieved by the said judgment and had approached learned District Judge, Chandigarh, by way of filing an appeal, which was assigned to Additional District Judge, Chandigarh, who vide judgment and decree dated 9.2.2016, dismissed the appeal, upholding the judgment and decree passed by the trial Court.

Still feeling aggrieved, defendant Sanjeev Kumar, had approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents. However, only respondent No.3 has put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

The trial Court, considering the legal and factual position and analyzing the evidence brought on file by the parties, had come to the conclusion that defendants No. 1 and 2 have raised illegal construction. The trial Court has referred to cross examination of DW-1 Sanjeev Kumar, wherein he had admitted that there is a shop existing in his property, which is below the level of the road and that he had received a notice from defendant No.3, Municipal Corporation, Manimajra, U.T., Chandigarh, to explain his stand regarding the construction of illegal basement and 4th storey in his house. The trial Court has further observed that a Local Commissioner was appointed to furnish his report regarding alleged

construction of the basement adjoining the house of the plaintiffs by defendants No. 1 and 2 and in his report Local Commissioner, Mr. Harsh Nagra, Advocate, had observed that he had visited the house on 23.5.2015 at 11.50 A.M. and he observed that though plaintiff No.1 was out of station but his wife Bhuti Devi, was present at the spot and a photographer accompanying the Local Commissioner had also taken photographs at the spot. A constructed basement in the house of the defendants was noticed, which had been divided into two portions i.e. lower ground floor and upper ground floor and that the defendants were operating their business from the said premises so constructed in the basement.

The trial Court has observed that since the construction has already been raised and completed, therefore no relief of permanent injunction could be granted, though with regard to the entitlement of the plaintiff was found with regard to the mandatory injunction observing that defendants were duty bound to fill up the earth upto the ground level so as to cover up the constructed basement.

Learned Additional District Judge, Chandigarh, found himself in agreement with the trial Court with regard to such observations and conclusion reached by the trial Court.

The judgments passed by the Courts below are well reasoned, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for any interference by this Court. No substantial question of law arises in the present appeal.

Therefore, the appeal is found to be without any merit and the same stands dismissed.

The appellant has also filed CR-8121-2016, for setting aside orders dated 4.7.2016, 16.9.2016 and 7.10.2016, vide which the Civil Judge (Junior Division), Chandgarh has ordered issuance of warrant of attachment of the property of petitioner/JD No.2 on the statement by J.D.No.1, that he is ready to comply with the judgment and decree but J.D. No.2 had taken forcibly possession of the basement and ground floor and is not allowing him to do so in execution of mandatory injunction in violation of law, whereas the Regular Second Appeal is pending before this Court.

In view of the discussion above, since the Regular Second Appeal has been dismissed, the appellant-revisionist is bound to comply with the judgment and decree and he cannot avoid the compliance therewith coming with any type of excuse. In case he fails to comply with the judgment and decree passed against him by the Courts below, the Executing Court is well within its rights to get it enforced in accordance with law.

Accordingly the CR-8121-2016, also stands dismissed.

29.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes/ No

Whether reportable Yes/ No