

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1457 of 2015 (O&M)

Date of decision : 24.7.2019

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Bhanwar Lal

.....Appellant

vs.

Parbhati Lal and another

.....Respondents

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

Present: Mr. G.S. Gandhi, Advocate for the appellant

Mr. J.P. Sharma, Advocate for respondent No.1.

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H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff -Parbhati Lal had brought a suit for declaration alongwith permanent and mandatory injunctions, against his brother Bhanwar Lal.

As per version of the plaintiff, house in suit was inherited by the parties from their father Sh. Budhram, thereafter it was partitioned by them in terms of written compromise dated 3.9.2005

and as per the site plan the portion on Northern side shown in red colour in the site plan came to the share of defendant No.1, whereas portion on the Southern side as depicted in green colour came to the share of the plaintiff; that as settled the partition wall was to be erected in such a manner so as to leave two feet wide area towards Western side adjacent to room of the plaintiff and an area of 2' x 2' was left so that window could be opened and the partition wall was to be erected in terms of demarcation given in the site plan. However, the plaintiff had covered that 2 feet area also by raising a partition wall with the result, window of the plaintiff opens in the portion falling to defendant No.1 and he has threatened to close that window; that further more in the partition wall defendant No.1 had left two outlets for rainy water and the rainy water flows from the house of plaintiff through those vents; that portion of defendant No.3 Gyarsi Lal was separate and that was purchased by plaintiff. According to the plaintiff at the time of construction of partition wall a curve was given towards Western side and that curve was given to avoid the closure of the window of the plaintiff but later on defendant No.1 encroached over that land of plaintiff. Defendant No.1 did not accede to the request of the plaintiff to demolish the portion of wall to the extent of 2 feet and to erect the same in consonance with the site plan prepared at the time of partition, giving rise to cause of action to the plaintiff to file the present suit.

Upon notice, defendant No.1 appeared and filed written statement contesting the suit raising various legal objections, though admitting that suit property was inherited by the parties from their

father and family settlement dated 3.9.2005 was entered into, in terms of which they had partitioned the suit property by metes and bounds, resulting in plaintiff becoming owner in possession of Southern portion whereas the portion towards Northern side going to defendant No.1 and that the partitioned wall which was erected at that time is in existence as it was decided i.e. towards East to West. The defendant denied that two feet area was to be left towards Western side just to avoid the closure of window of the plaintiff or that defendant No.1 had raised the wall 3-4 days prior to filing of the present suit and according to such defendant, wall is in existence from the date of partition. Moreover, this partition wall is in existence in the middle of the room, which was towards Eastern side and earlier it was in possession of Gayarsi Lal. This defendant denied that he has opened vents for discharge of rainy water towards plaintiff. According to such defendant, there is no mention in the compromise with regard to leaving two feet wide space and wall has been erected as per compromise. Denying remaining allegations, he prayed for dismissal of the suit.

Replication to the written statement was filed controverting the allegations in the written statement, whereas reiterating the averments made in the plaint.

From the pleadings of the parties, following issues were framed by Additional Civil Judge (Senior Division), Narnaul, vide his order dated 11.9.2006 :-

1. Whether defendant No.1 has encroached upon two feet land, which was left for window/grill, after due violation

of writing dated 3.9.2005 regarding mutual partition as alleged ? OPP

2. Whether plaintiff is entitled to decree of declaration with consequential relief of mandatory injunction directing the defendants to demolish wall over land measuring 2 feet as prayed for ? OPP
3. Whether present suit is not maintainable? OPD
4. Whether plaintiff has not come in the Court with clean hands and concealed the true and material facts from the Court? OPD
5. Relief.

Parties lead evidence in support of their respective claims.

During the course of his evidence, plaintiff, examined Kailash Saini, Draughtsman as PW-1, Dharambir Draughtsman as PW-2, Pardeep Draughtsman as PW-3, Rama Nand Deed Writer as PW-4, Rajender Parsad Clerk of DC Office as PW-5, while plaintiff himself appeared as PW-6 and tendered his affidavit Exhibit PW 6/A, Raju appeared as PW-7, besides examining Parhlad as PW-8.

The plaintiff produced in evidence the following documents :-

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|---|----------------|
| 1. Site plan dated 3.9.2005 | Exhibit P-1 |
| 2. Site plan in respect of entire suit property | Exhibit P-2 |
| 3. Site plan in respect of portion of plaintiff | Exhibit P-3 |
| 4. Original copy of compromise for partition dated 3.9.2005. | Exhibit PW/4/A |
| 5. Copy of letter dated 29.3.1990 issued by Collector to plaintiff. | Exhibit PW5/A |

In rebuttal, the defendant No.1 himself stepped into the witness box as DW-1 and tendered his affidavit Exhibit DW1/A. In addition to that he examined Mukesh as DW-2 who produced his affidavit as Exhibit DW2/A. Thereafter the evidence of defendant No.1 was closed by order of the Court.

After hearing the arguments, the trial Court decided issues No. 1 and 2 against the defendants and in favour of the plaintiff, whereas issues No. 3 and 4 were decided against the defendants. As a result of findings on issues, the trial Court vide detailed judgment dated 7.12.2011, decreed the suit of the plaintiff granting a decree for declaration to the plaintiff that he is entitled to two feet wide area which was to be left while erecting the partition wall for the protection of his window from being closed and further as a consequential relief, defendant No.1 was directed to demolish the partition wall to the extent of two feet as has been shown in the site plan Exhibit P1, within three months from the date of decree in addition to that he was restrained from closing the window of the plaintiff situated on North-East corner. The decree was passed in favour plaintiff and against defendant No.1.

Feeling aggrieved, such defendant had filed an appeal to the District Judge, Narnaul, who vide judgment and decree dated 25.11.2014, dismissed the same.

Still feeling dissatisfied, defendant Bhanwar Lal has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the plaintiff-respondent No.1.

I have learned counsel for the parties, besides going through

the record and I find that there is absolutely no merit in the appeal.

Both the Courts, considering facts and circumstances of the case as well as pleadings of the parties and the evidence brought on file by the contestants, came to the conclusion that family partition Exhibit PW4/A which is dated 3.9.2005, is duly proved on record, signed by the parties and the witnesses and as per site plan Exhibit P1, green portion had fallen to the share of plaintiff, whereas red portion had fallen to the share of defendant No. 1, two feet space on the Western side in front of window of room of plaintiff is shown to be left for plaintiff. The plea of the defendant that it was a result of fraud, mis-representation, taking advantage of his illiteracy and ignorance, was rejected by the Courts below and rightly, so the site plan is mentioned in the partition deed Exhibit PW 4/A itself. Therefore the same is to be acted upon. As it comes out defendant No.1 in violation of the family settlement had erected a partition wall in straight line with two feet area blocking window of the plaintiff's room which could not be allowed. As such the Courts below have rightly decreed the suit of the plaintiff against defendant No.1.

There is no illegality or infirmity in those judgments. Those are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

The judgment referred to by learned counsel for the appellant i.e. **A. Abdul Rashid Khan (dead) vs. P.A.K.A. Shahul Hamid 2001 (4) RCR (Civil) 824**, does not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

No substantial question of law arises in the present appeal.

The appeal being without any merit stands dismissed.

24.7.2019

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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes/ No
Whether reportable	Yes/ No