

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2167 of 2018 (O&M)

Date of Decision : 29.10.2019

Hari Ram and others

.....Appellants

Versus

Chander and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Peeush Gagneja, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondents plaintiffs was decreed by the trial Court vide judgment and decree dated 16.12.2016, and as even the appeal preferred against the said decree failed and was dismissed on 14.08.2017, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a decree for injunction restraining the defendants from encroaching the suit property bearing khewat/khatoni No.547/594, khasra No.194 (0-4), measuring 0-4 marla, situated in village Gangoli, Tehsil Nuh, Mewat, and from raising any construction thereupon. And, in the event, the defendants succeed in raising and constructed upon the disputed portion, they be directed to remove the said encroachment and restore the site to its original position.

In the written statement filed by the defendants it was pleaded *inter alia* that father of the plaintiffs namely Girdhari Lal executed a Will dated 29.07.2004, qua the suit property, in favour of brother of defendants

namely Ram. Whereafter a boundary wall was constructed around the suit property and he continued to be owner in possession of the suit property. And post death of Ram his widow Saroj succeeded to his estate. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that the evidence on record proved plaintiffs to be the owner of the suit land. The revenue record as also the Will bearing No.37/3 dated 08.11.2012 also substantiated this position. On the contrary, the defendants failed to prove the execution and validity of the Will dated 29.07.2004 alleged to have been executed by father of the plaintiffs namely Girdhari Lal in favour of their brother. Not just that defendants failed to examine any of the witnesses of the said Will. Once the defendants failed to show if they had any right, title or interest in the suit property, plaintiffs being the owner in possession were entitled to the injunction prayed for.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

29.10.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No