

In the High Court of Punjab and Haryana at Chandigarh

RSA- 36 of 2019 (O&M)
Date of Decision:16.1.2020

Tejinder Singh

---Appellant

vs.

Swaran Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Lalit Kumar, Advocate
for the appellant

Rekha Mittal, J.

CM No. 102-C of 2019

Prayer in this application is for condoning delay of 56 days in
refiling the appeal.

Heard.

Allowed as prayed for. Delay of 56 days in refiling the appeal
stands condoned.

Disposed of accordingly.

CM No. 5127-C of 2019

Heard.

Allowed as prayed for. Annexures A-1 and A-2 are taken on
record, subject to just exceptions.

CM No. 9434-C of 2019

Heard.

Allowed as prayed for. Annexures A-3 to A-5 are taken on record, subject to just exceptions.

Main case

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction restraining the respondents-defendants from encroaching the passage by way of making any type of construction, shown in red colour by letters 'ABDEFGH' in the site plan, situated at Ward No. 5, Khamanon Khurd, Tehsil Khamanon, District Fatehgarh Sahib, was dismissed by the trial court vide judgment and decree dated 23.9.2016 that came to be affirmed in appeal by the Additional District Judge, Fatehgarh Sahib.

The case of appellant-plaintiff is that appellant is owner and in possession of house shown by letters 'IJKLMNOPFC' in yellow colour in site plan. He along with his family is residing in the said house. A compromise was effected between the appellant and respondent No. 1 on 29.5.2013 vide which respondent no. 1 left passage 4 feet wide i.e. 20' +15' +10' total 45 feet in length, shown in red colour in the site plan. Defendant No. 1 admitted the plaintiff to be owner and in possession of said passage and has right to use the same. It is averred that respondents-defendants are threatening to encroach upon the passage by making construction to which they have no right.

The courts have consistently held that compromise Ex. P4 can not be enforced in law as the same is unregistered and witnesses of the appellant-plaintiff had admitted that said compromise has not been acted upon.

Counsel for the appellant would argue that Swaran Singh respondent No. 1-defendant, paternal uncle of the appellant, had admitted the factum of compromise dated 29.5.2013, therefore, he cannot be allowed to have escape therefrom. It is argued that in view of close relationship between the parties, there is nothing unnatural/abnormal if defendant No. 1 had agreed to provide passage for having access to the house used as residence by the appellant and his family.

I have heard counsel for appellant and perused the paper book particularly compromise dated 29.5.2013 Annexure A-1, basis of the suit.

Perusal of the compromise makes it evident that Swaran Singh-respondent No. 1 agreed to give land measuring 4 feet wide and 45 feet in length approximately making the appellant owner and in possession of the said land. As per the settled position in law, relinquishment of rights in immovable property valuing Rs. 100/- or more requires a registered document to be executed between the parties. It is never plea of appellant that value of the property is less than Rs. 100/-. In the given circumstances, the appellant can not assert his right of ownership and possession of passage in question for want of a registered document.

Counsel has not disputed that one of the witnesses examined by him had stated that this compromise was not given effect to. This apart, agreement/compromise is without consideration, therefore, the same is void for want of one of the essential ingredients of a valid contract. Analyzed from any angle, I do not find any reason to differ with concurrent findings recorded by the courts.

For the foregoing reasons, finding no merit, the appeal fails and

is accordingly dismissed in limine.

(Rekha Mittal)
Judge

16.1.2020
paramjit

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