

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2717-1988 (O&M)
Date of decision : 04.03.2020

Jang Singh (since deceased) through his LRs and others

...Appellants

Versus

Uttam Singh (since deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S. Dhandi, Advocate for the appellants.

Mr. Keshav Partap Singh, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants have filed the present Regular Second Appeal against the judgment and decree passed by the learned First Appellate Court resulting in decree for possession of an open vacant space identified by the words ABCD in the layout plan Ex.P1. The property in dispute is situated within the abadi of village and, therefore, there is no document of title.

The trial Court, in order to find out the correct position, appointed a Local Commissioner who visited the spot and found that the property is part of the house of the plaintiffs and the property of the defendants is situated towards south and eastern side of the property in dispute. It was further found that the property of the defendants which is two storey house, does not have any opening of door towards the property in dispute.

However, learned trial Court dismissed the suit whereas learned First Appellate Court, on re-appreciation of evidence, reversed the judgment of the trial Court and passed a decree for possession in favour of the plaintiffs.

This Court has heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants has submitted that a previous decree was passed in favour of predecessor of the plaintiffs as well as defendants on 08.11.2000 BK. Hence, he submitted that since the predecessor of the defendants was also one of the plaintiff, therefore, the previous decree which was affirmed in appeal by the District Judge on 29.11.2001 BK and, therefore, the defendants also have a right in the property.

He further submitted that as per the report of the Local Commissioner, windows and ventilators of the residential house belonging to the defendants are opening towards the plot in question and even the drains laid to discharge rain water are having opening towards the plot in question. Hence, he submitted that merely because residential house of the defendants does not have any door towards the property in dispute, cannot be made basis of the fact that the disputed site exclusively belonging to the plaintiffs.

On the other hand, learned counsel for the respondents while drawing attention of the Court to Ex.P1 layout plan attached with the plaint and Ex.P7 decree passed on 08.11.2000 BK, has submitted that the property in dispute in the previous suit and the present suit is not exactly the same. It

may be noted here that in the decree passed on 08.11.2000 BK, the suit property in that suit was identified with the properties situated on all the four directions in the following manner:-

*“East:- House of Bakhshi
West:- Thoroughfare
North:- Maidan Sufaid Mangal Munshi etc.
South:- Thoroughfare”*

Whereas the suit property in the present suit is identified with the property situated on all the four directions in the following manner in the plaint:-

*“North:- Site of the plaintiffs
South:- Khola of plaintiffs
East:- House of defendants
West:- Street”*

Thus, it cannot be said that the property in the previous suit and the present suit is common. Still further, learned First Appellate Court, on appreciation of evidence, has recorded a finding of fact. Such finding of fact can only be interfered with while exercising jurisdiction of second appeal only, if it is established that the judgment passed by the learned First Appellate Court suffers from any substantive error in misreading or non-reading of evidence.

Although, learned counsel for the appellants made sincere attempt, however, failed to convince the Court that the judgment passed by the learned First Appellate Court suffers from any substantive error.

The Regular Second Appeals are regulated by Section 41 of the Punjab Courts Act, 1918, which is extracted as under:-

“41. Second appeals—(1) An appeal shall lie to the High

Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :

(a) the decision being contrary to law or to some custom or usage having the force of law :

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law :

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

[Explanation—A question relating to the existence of validity of a custom or usage shall be deemed to be a question of law within the meaning of his section:]

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) Sub-Section 3 omitted by Punjab Act 6 of 1941, section 2 (b)]”

In view of the aforesaid discussion, this Court does not find any good ground to interfere.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

04.03.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No