

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

1. RSA-1459-2009 (O&M)
Date of decision : 28.01.2020

Gurdev Singh ...Appellant

Versus

Gurmeet Singh (since deceased) through his LRs and others ...Respondents

2. COCP-2316-2011 (O&M)
Date of decision : 28.01.2020

Baljit Kaur ...Petitioner

Versus

Gurdev Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rajeev Godara, Advocate for the appellant
(In RSA-1459-2009)

Mr. Vikas Kumar, Advocate for the respondents
(In RSA-1459-2009)

Mr. Surinder Garg, Advocate for the petitioner
(In COCP-2316-2011)

ANIL KSHETARPAL, J.

By this judgment, RSA-1459-2009 and COCP-2316-2011 shall stand disposed of.

The plaintiff-appellant has filed the appeal against the judgment passed by the learned First Appellate Court. Plaintiff and the defendants are neighbours having adjoining houses. The dispute is with regard to a small strip of land having width of 1 feet. The plaintiff claims that there was a common wall having thickness of 2 feet existing in between the properties.

The aforesaid wall has been removed by the defendants and new wall has been constructed resulting in encroachment of 1 feet wide strip of land.

On the other hand, the defendants claim that the common wall was 16 inches thick and not 2 feet as is being alleged. Defendants claimed that they have constructed, before filing the suit, 8 inches wall in their own area whereas plaintiff has constructed 5 inches thick wall. They further pleaded that a police complaint was filed by the plaintiff, in which compromise was arrived at and the defendants were permitted to construct wall after leaving 1 ½ inches strip of land.

Learned trial Court, on appreciation of evidence, directed the defendants to demolish the wall and restore the common wall of 92 feet length having width of 16 inches within a period of three months.

Learned First Appellate Court, in appeal, has reversed the judgment and decree passed by the learned trial Court.

At this stage, it may be noted here that the plaintiff initially came to the Court claiming that the common wall was having thickness of 2 feet. However, before the Appellate Court, it was stated that the wall was having thickness of 16 inch. Still further, it has come on record that when the defendants wanted to construct a wall, the plaintiff created obstruction. The defendants filed a suit and the plaintiff made a statement to the effect that he would not interfere if the defendants constructed the common wall. However, inadvertently, it was written that the defendants want to construct northern wall. Admittedly, the common wall between the parties is on eastern side only.

This Court has heard learned counsel for the parties at length and

with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has submitted that once it is established on the file that the thickness of the wall in between the properties was 16 inch, therefore, out of 16” strip of land, strip of 8 inches belongs to the plaintiff-appellant. Hence, he submitted that the First Appellate Court has committed error.

On the other hand, learned counsel for the respondents while referring to the report of the Local Commissioner Ex.DW3/A has submitted that the defendants have constructed the wall in their own land. It was further contended that in the previous suit filed by the defendants, the plaintiff had made a statement that he shall not have any objection.

It is sad that for a small dispute, the parties have to come to the High Court. Efforts were also made through Mediation and Conciliation Centre attached to this Court, but all in vain.

Hence, this Court proceeds to decide the dispute. On consideration of the matter, it is apparent that the plaintiff is not clear in his stand. He filed a suit claiming that the old common wall having thickness of 2 feet. Now, he claims as also before the First Appellate Court, that the thickness of the common wall was 16 inches. When the defendants filed a suit, the plaintiff made a statement that he has no objection if the defendants are permitted to construct the wall. Still further, it has come in evidence that the defendants have constructed the wall having width of 8 inches whereas the defendants have constructed a wall on his side having width of 5 inches. In these circumstances, in absence of cogent evidence to prove that the wall

has been constructed by the defendants in the land belonging to the plaintiff, no relief can be granted to the plaintiff. The plaintiff was required to prove by leading cogent evidence that some part of his property has been encroached upon. The suit filed by the plaintiff cannot be decreed only on the basis of assumption.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the judgment and decree passed by learned First Appellate Court.

COCP-2316-2011 has been filed with the assertions that the interim order passed on 19.07.2010, has been violated. It may be noted here that once the appeal itself has been decided, finding no merit therein, therefore, no further order, in the petition for initiation of contempt proceedings, is required to be passed.

Hence, both the appeal as well as contempt petition are dismissed.

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

28.01.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No