

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

RSA 6478 of 2014 (O&M)

Date of Decision: January 28, 2020

Yogender Kumar

...Appellant

Versus

Balbir and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Sanjay Vashisht, Advocate
for the appellant.

Mr. Jaiveer Yadav, Advocate
for the respondent 1.

Service qua respondents
No. 2, 3, 4, 8, 10 and 11 dispensed with vide order
dated 05.11.2019.

FATEH DEEP SINGH, J. (Oral)

Having tasted defeat throughout, firstly, before the Court of learned Additional Civil Judge (Senior Division), Rewari, when suit of the appellant/plaintiff Yogender Kumar stood dismissed vide judgment dated 06.06.2011 and, thereafter, before the first appellate Court, when the Court of learned Additional District Judge, Rewari dismissed his appeal vide impugned findings dated 07.07.2014. The unsuccessful

appellant/plaintiff had now invoked the jurisdiction of this Court under regular second appeal.

The appellant/plaintiff Yogender Kumar filed a suit for permanent injunction seeking order of restraint against respondents/defendants from digging foundation in the land duly detailed in the site plan annexed with the plaint and further from raising construction on the wall by breaking windows or ventilators etc. The claim is based on the stand that the appellant/plaintiff was residing in a haveli constructed way back in 1891 and the respondents/defendants were their neighbours and had tried to trespass, take illegal occupation of a passage (gali) and make construction, thus, causing loss to the appellant/plaintiff. Hence the suit.

The respondents/defendants claim that there was no such gali on the western side and they had built a "*chappar*" (temporary structure) with permanent foundation since more than 50/60 years and that they were the exclusive owners in possession of the same having secured it through their lineage.

On these pleadings, the trial Court had framed the following issues:-

- (1) Whether the plaintiff is entitled for restraining the defendants from raising construction over the portion marked ABCD shown in red colour being gali.? OPD

2. Whether the suit is not maintainable"OPD.
3. Whether the plaintiff has no cause of action to file the present suit?OPD.
4. Relief.

The plaintiff examined himself as PW1, Vijay Kumar as PW2, Mahavir (Draftsman) as PW3, Manoj Kumar Advocate being Local Commissioner as PW4, Pawan Kumar as PW5 and, thereafter, closed the evidence.

On the other hand, defendants examined Rattan Lal (Photographer) as DW1, Sheotaj as DW2, Rajpal Yadav (Draftsman) as DW3 and Balbir as DW4 and, thereafter, closed the evidence. Consequently, the suit of the plaintiff stood dismissed by the trial Court and same was the fate in the first appeal.

Heard Mr. Sanjay Vashisht, Advocate for the appellant and Mr. Jaiveer Yadav, Advocate for respondent No.1 and perused the records of the case.

Appreciating the submissions, it is well settled principle of law that the plaintiff is supposed to stand on his own legs and cannot take benefit of the weaknesses of the defendant. Reliance in this regard can be placed on in **State of Madhya Pradesh Vs. Nomi Singh and another 2015 SCC online SC 251**. Moreover, pleadings are the very foundation of a case of a party. It is not the case of the appellant/plaintiff that

by his act and conduct, the respondents/defendants were trying to obstruct easmentary rights of the appellant/plaintiff and rather his whole aggrivement is that the respondents/defendants be restrained from digging foundation near the haveli. The unrefuted documentary and oral testimony of the appellant/plaintiff as well as the respondents/defendants shall be beyond any doubt that adjoining the *haveli*, there exists the “chappar” of the respondents/defendants. The own admission by the appellant/plaintiff as PW2 that the “*chappar*” was in existence since a long time is reflective of the fact that there was no imminent likelihood of threatened action at the hands of the respondents/defendants. The report of the Local Commissioner certainly leaves no scope to doubt the stand of the respondents/defendants. The Court below has rightly drawn the inference that since the respondents/defendants are owners in possession of the adjoining land, they are at liberty to put the same to their best use. There being no claim of the appellant/plaintiff to get easmentary right over their windows and ventilators and threatened act of the respondents/defendants qua them, the Courts below has rightly declined to show indulgence to the prayer of the appellant/plaintiff in this regard. The conclusion drawn in the impugned findings that there was no legal cause of action that has arisen to the appellant/plaintiff to file this suit and Shri

Sanjay Vashisht, counsel for the appellant could not bear out any such existing legal valid cause of action much less any permissible relief to the appellant/plaintiff on that score. There has been consistent concurrent findings of the two Courts below holding out that the appellant/plaintiff certainly failed to prove his case necessitating passing of any favorable judgment and decree in his favour.

The appeal is hopelessly without any merits and stands dismissed.

January 28, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

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