

Sr. No.110

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

RSA No.3528 of 2018 (O&M)

Date of Decision: 24.01.2020

Salwinder Singh

...Appellant

Versus

Balbir Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Prabhjyot Singh Chahal, Advocate for
Mr. G.S.Nagra, Advocate,
for the appellant.

ARUN MONGA, J.

1. Having suffered adverse judgment and decree by the two Courts below plaintiff is in second appeal before this Court. The plaintiff had filed the said suit to restrain the defendants from encroaching upon and filling up the mud pond (chhapper) as the same is the only source for the plaintiff to discharge waste water. The trial Court dismissed the suit and the First Appellate Court too upheld the findings rendered by the trial Court.

2. As per brief facts of the case, on the western side of the house of the plaintiff a pond is situated. The house of defendants is also situated on the western side of the house of the plaintiff and there is a street in between the house of the plaintiff and the defendants and there exist a waste water drainage over a shamlat land in which the waste water of plaintiff's house is discharged. The said pond is meant for sullage and rain water during rainy season. The waste water of the houses of plaintiff and others is also

discharged in that pond. The said shamlat land falls within the lal lakir of village. The plaintiff has no other source for discharge of the sullage water except in the pond.

3. In the year, 2008 defendants dug out a water tank near the house of plaintiff then the plaintiff filed a suit for permanent injunction against the defendants in which defendants made a statement that they will not dig out (earth) near the house of the plaintiff and suit was disposed of vide order dated 17.02.2009. After that defendants tried to encroach the said chhapper. Plaintiff filed an application under Section 133 Cr.P.C. and that case was again compromised and settled vide order dated 19.01.2010. Defendants were threatening without any right and title to encroach upon the pond by filling it up with soil forcibly, illegally without following any due course of law.

4. The defendants pleaded that there is no pond as is alleged by the plaintiff and that the suit property is under the exclusive possession of the defendants. Further they have sown vegetables and are using the same for storing cow dung. They agreed that there is a street between the parties' houses but since there is no pond at spot, the question of discharge of water into it does not arise.

5. Based on the rival pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff entitled to the relief of permanent injunction as prayed for? OPP
2. Whether suit of the plaintiff is barred under Order 2 Rule 2 CPC? OPD

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has got no locus standi to file the present suit? OPD
5. Whether plaintiff has got no cause of action to file the present suit? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present? OPD
7. Whether plaintiff has not come the Court with clean hands and suppressed the material facts from the Court? OPD
8. Whether the suit of plaintiff has not properly valued for the purpose of court fees and jurisdiction? OPD

6. All the issues were decided by trial Court against the plaintiff except issue Nos.2 and 8.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard the learned counsel for appellant and have perused the judgments and decrees of both the Courts below. To my mind, these judgments have been passed after due appreciation of evidence adduced by the respective parties in support of their pleadings to discharge their onus of proof in terms of the issues *ibid*.

9. In view of the reasons contained aforesaid and also having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised warranting interference of this Court in present second appeal.

10. There seems no perversity or illegality in the

concurrent findings of facts returned by the Courts below on appreciation of evidence.

11. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and reasons recorded therein, no interference is called for by this Court.

13. Appeal is, accordingly, dismissed.

14. Pending application, if any, shall also stand disposed of.

15. No order as to costs.

24.01.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No