

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

**RSA NO. 636 OF 2020 (O&M)
DATE OF DECISION : 26.02.2020**

Ram Diya

...Appellant

versus

Ram Karan and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ajit Malik, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

CM NOS. 1901-02-C OF 2020

For the reasons stated in the applications, same are allowed and delay of 05 days in filing and 63 days in re-filing the appeal are condoned, subject to all just exceptions.

MAIN CASE (O&M)

Having suffered concurrent adverse findings by the Courts below, the plaintiff/appellant herein is before this Court in Regular Second Appeal assailing the trial Court judgment and decree dated 12.01.2016, as upheld by the First Appellate Court vide its judgment and decree dated 24.07.2019.

2. Succinct factual matrix as noticed by the First Appellate Court first. Plaintiff is owner in possession of a plot bearing No. 231 situated within the abadi of village Mandori, Tehsil Kharkhoda, District Sonapat. Defendants are owners in

possession of plot bearing No. 228. The plaintiff had constructed two rooms and one bathroom about 20 years before filing the suit. Now, the plaintiff has constructed four walls to build up a new room but the defendants are interfering in the new construction of the room without any right. They are also threatening the plaintiff to demolish the four walls of newly constructed room. The plaintiff requested the defendants not to interfere into peaceful construction being raised by the plaintiff but the defendants refused to accede to the request of the plaintiff. Hence, the suit.

3. Defendants filed joint written statement taking preliminary objections regarding locus standi; cause of action; maintainability of suit etc. On merits, it was submitted that the plaintiff did not supply any site plan to the defendants. The plaintiff had already constructed two rooms and one bathroom about 20 years ago. Now he has constructed four walls to build a new room upto roof level. It was further submitted that the in view of settlement arrived on 04.03.1960 between the parties, the plaintiff does not have any right, title or interest to build a new room up to the level of roof. The construction raised by the plaintiff is totally illegal. When the plaintiff had raised the construction by covering 2-½ feet area then the defendants had raised the objection and had reported the matter to police. The plaintiff as per the said settlement had agreed that he will not raise any construction over the space of 2-½ feet up to the

length of 28 feet i.e. back wall distance including the four parnalas.

4. Defendants also filed counter claim and submitted that the they are owners in possession of the plots bearing Nos. 200, 200A and 228 in village Mandori, Tehsil Kharkhoda, District Sonapat. The predecessor of the plaintiff and defendants have settled all their matter as per agreement dated 04.03.1960. The plaintiff is under legal obligation to leave the space of 2 ½ feet from the back wall of the property of the defendants so that the water from the four parnalas may flow and drain out. It is submitted that there are four parnalas on the back side of the property of the defendants from which the water is flowing and draining out on the land of plaintiff since last 75 years without any kind of hindrance, obstruction from any corner whatsoever.

5. Written statement to the counter-claim was filed by the plaintiff and the averments contained in the plaint were reiterated. It was denied that any legal settlement between the predecessor of the parties ever took place. Execution of agreement dated 04.03.1960 was also denied. No replication was filed. Based on the rival pleadings, following issues were framed on 25.03.2010 and 05.11.2012 :-

1) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP

2) Whether the suit is not maintainable in the present form ? OPD

3) Whether the plaintiff has no cause of action or locus standi to file the present suit ? OPD

4) Whether the proper court fees has not been affixed on the plaint ? OPD

5-A) Whether the defendants have got easementary right over the suit property under Section 15 of the Indian Easement Act ? OPD

5-B) Whether the defendants are entitled to the relief of counter claim as prayed for ? OPD

6) Relief.

6. In order to prove their case and to discharge their onus as per the issues framed *ibid*, the parties to suit adduced their respective oral as well as documentary evidence.

7. Based on the collective evidence adduced by both the parties and upon appreciation thereof, the trial Court decreed the suit of plaintiff. His appeal was dismissed by the First Appellate Court.

8. I have heard learned counsel for the appellant and have perused the judgments and decrees of both the Courts below.

9. The relevant extract of the judgment from the findings returned by the trial Court is as under :

" As per the defendants on 04.03.1960 the predecessor in interest of the parties entered into an agreement according to which the wall of the defendants situated towards the plot of the plaintiff having parnalas and ventilation window etc. would be kept open by the plaintiff by way of leaving 2 ½ feet place so that the light can enter through those ventilators etc. Now in violation of that agreement the plaintiff has constructed a wall adjoining the wall of the defendants. Permanent injunction to raise construction in violation of the settlement and mandatory injunction to demolish the construction raised by the plaintiff.

The only relevant document to prove the settlement dt 4.3.1960 is Ex D1. The opposite side of the sheet no. 2 Ex D1 depicts that Nihal Singh, Rajender and Chandan Singh(father of plaintiff) jointly stated that they would not raise construction on 2 ½ feet of space in land. It is duly signed by Nihal Singh and Rajender Singh counsel and thumb impression is duly given by Chandan Singh. Therefore, it can be said that the onus which was upon the defendants to prove the fact of settlement has been discharged by the defendants. The requisition of record to the court has been proved by the DWs. No rebuttal evidence has been led by the plaintiff.

Once the settlement has been arrived it should be honoured. Therefore, the defendants have been able to establish his counter claim.

There is no pleading of easementary right in the counter claim. The facts not pleaded cannot be decided. Instead in the counter claim the defendants have pleaded about the settlement and has claimed

mandatory injunction and permanent injunction qua the settlement dated 04.03.1960 only. Once the settlement arrived between the parties is proved, in that case parties are bound by the settlement therefore, the counter claim of the defendants is decreed qua the settlement dt 04.03.1960."

10. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto and observed as under :

" Appellant/plaintiff cannot back out from the said compromise effected by his father Chandan singh. There is nothing to doubt the said compromise arrived between the parties including Sh.Chandan Singh, father of the plaintiff/appellant. Perusal of the said compromise shows that space of 2 ½ feet will be left by Chandan Singh in the northern direction of his plot before making any construction for the purpose of easement right by way of windows, ventilators and water drains etc. The photographs Ex DW3.A also reflects the parrala of defendants along with their ventilators. The construction of any new room on the side of this wall will certainly restrict the enjoyment right by the defendants.

11. 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 to prove in terms of the issues *ibid*. No fresh ground warranting interference of this Court in second appeal is made out.

12. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

13. 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.

14. In view of my discussion above and the reasons recorded therein, no interference is called for by this Court. The instant second appeal being bereft of merit is accordingly dismissed.

15. Pending application, if any, also stand disposed of.

16. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 26, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |