

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 3189 of 2019

Date of decision : March 01, 2021

Balbir Singh

.....Appellant

Versus

Baldev Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Dhivya Jerath, Advocate for the appellant.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant-defendant has filed this regular second appeal challenging judgment and decree dated 20.12.2016 passed by the learned Civil Judge (Junior Division), Fatehgarh Sahib as well as judgment and decree dated 27.02.2019 passed by learned District Judge, Fatehgarh Sahib whereby suit filed by the respondent – plaintiff has been decreed. Plaintiff – respondent filed a suit for permanent injunction for restraining the defendant – present appellant, from encroaching upon any portion of the street as described in the plaint and further restraining the defendant from interfering in peaceful use and enjoyment of the said passage/street by the plaintiff. It is averred in the plaint that plaintiff is the owner in possession of his residential house, a street/passage was claimed to be existing on the southern side of his house. Plaintiff claimed to be using and enjoying the street to approach his house at times. Defendant's property was adjoining the street in dispute on its western side. Defendant threatened to

encroach the street and interfere in its use and enjoyment by the plaintiff. Hence, the suit was filed.

Appellant - defendant contested the suit. Existence of the street itself was denied. Appellant – defendant set up a case that the plaintiff was accessing his house from the street on the northern side of his house. Property claimed to be a street/passage, was stated to be a part of the courtyard of the appellant's house. The entire courtyard including the portion claimed to be a street by the plaintiff was stated to be bound by a boundary wall raised by the defendant.

Replication was filed.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the door of the house of the plaintiff opens towards the Pucca street shown?
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has concealed true and material facts from the court? OPD
5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
6. Relief.

Evidence was led by both the parties.

Learned trial court after considering the evidence on record concluded that the suit property stood established as a street/passage abutting the plaintiff's house and he had a right to seek injunction against the defendant from encroaching upon it. Suit was, accordingly, decreed and defendant – appellant was restrained from encroaching upon any portion of the suit property by raising any construction thereon, except in due course of law. Appeal filed by the present appellant was also dismissed by the learned District Judge, Fatehgarh Sahib vide judgment and decree dated 27.02.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant submits that both the learned courts below have grossly erred in decreeing the suit filed by the plaintiff - respondent. It is argued that learned courts below have misread the evidence on record. Present appellant – defendant at no stage had accepted part of the property in dispute to be a street or passage. The phrase used by the appellant in his deposition is ‘alleged passage’ and not ‘passage’. Moreover, the site plan produced by the appellant in the suit filed by him against the present plaintiff has also been misread. In fact, decree passed in favour of the appellant in the suit filed by him against the present plaintiff would reveal that present suit has been wrongly decreed. It is, thus, prayed that judgment and decree dated 20.12.2016 passed by the learned Civil Judge (Junior Division), Fatehgarh Sahib as well as judgment and decree dated 27.02.2019 passed by the learned District Judge, Fatehgarh Sahib be set aside.

Heard learned counsel for the appellant and have gone through the file as well as part of the evidence furnished and referred to by learned counsel during the course of hearing.

It is a matter of record that present appellant had earlier filed a suit against the plaintiff – respondent titled ‘Balbir Singh versus Baldev Singh and another’. Reference has been made by the learned courts below to certified copies of site plans (Exs.P2 and P3), which were produced by the present appellant in the suit filed by him against the present plaintiff – respondent. Property in dispute therein, has been held to be the same as the property in dispute in the present matter. It was reflected as *kacha* (unmetalled) street. Learned trial Court has specifically observed that comparison of details of property mentioned in the headnote of the present plaint and site plans (Exs.P1 and D1) with details of property mentioned in report (Ex.D2) coupled with the headnote of the previous plaint filed by the present appellant against respondent- plaintiff, reveals that property involved in both the suits is the same. Ex. D2 is the report of the Local

Commissioner in a matter titled 'Gram Panchayat versus Balbir Singh'. Said documents (Ex.D2) and site plan (Ex.D3) were placed on record by the present appellant. It is a matter of record that the appellant did not exhibit the judgment in the suit titled 'Balbir Singh versus Baldev Singh' which he claimed to have filed against the plaintiff – respondent. Learned counsel for the appellant is unable to deny that there is no such pleading in the written statement and neither was any evidence produced by the appellant to substantiate the argument raised before me that proceedings in the earlier suit prove the passage/street to be a part of the property belonging to the appellant. Documents referred to by both the learned courts below reveal that disputed property is duly proved to be a passage. Learned courts below have returned concurrent findings of fact, based upon proper appreciation of the evidence on record.

Keeping in view the facts and circumstances, there is no question of law, much less a substantial question of law, which is involved for consideration in this regular second appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 20.12.2016 passed by the learned Civil Judge (Junior Division), Fatehgarh Sahib as well as judgment and decree dated 27.02.2019 passed by the learned District Judge, Fatehgarh Sahib, which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

March 01, 2021
Rts

(Lisa Gill)
Judge

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