

**125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****Date of decision : 09.09.2022****1. RSA-336-2022 (O&M)**

Yogesh	Vs.	...Appellant
Tara Chand		...Respondent

2. RSA-464-2022 (O&M)

Yogesh	Vs.	...Appellant
Tara Chand		...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Sharmila Sharma, Advocate for the appellant.
Mr. Aman Arora, Advocate for the respondent/Caveator.

*********MANOJ BAJAJ, J.**

Appellant (plaintiff) has filed the above separate appeals to challenge the common judgment and decree dated 12.03.2021 passed by First Appellate Court, in civil appeal Nos.476/2017 and 478/2017, whereby the common judgment and decree dated 02.11.2017 passed by Civil Judge (Junior Division) Sonipat, dismissing the suit for permanent injunction by plaintiff was upheld, whereas dismissal of counter claim by defendant-Tara Chand was reversed by accepting his appeal bearing No.478/2017.

The facts in brief leading to the present appeals are that the plaintiff filed a suit for permanent injunction relating to the plot measuring 2 kanals 6 marlas in the total land measuring 188 kanals 9 marlas situated at Village Lehrara, Tehsil and District Sonipat and claimed himself to be owner in possession of the suit property on the basis of a sale deed dated 07.01.2004.

The sale deed was executed by Om Parkash against the sale consideration of

Rs.2,59,000/-, whereupon, the mutation No.3727 was also entered in his name. As per the pleadings, the plaintiff is in continuous possession of the suit property without any interruption from any person, who has also raised the boundary walls, but defendant without any right, title or interest is attempting to interfere in his peaceful possession, therefore, he filed a civil suit bearing No.144/2004, which was dismissed vide judgment and decree dated 10.06.2011. His first appeal against the said decree was also dismissed on 02.03.2012 and against that, he filed RSA bearing No.1682-2012, wherein the plaintiff's request to withdraw the suit with liberty to file fresh on the same cause of action was accepted. Thus, the plaintiff once again filed the suit seeking injunction against the defendant, thereby restraining him from dispossessing plaintiff from the suit property.

The suit was contested by defendant, who raised various preliminary objections relating to maintainability of the suit, concealment of material facts, lack of identity of property etc., and on merits, it was pleaded that the entire land holding measuring 188 kanals 9 marlas was an agricultural land and the owner later on converted this land into plots and sold to various persons. The defendant purchased the plot bearing No.59 measuring 500 square yards from the original owner, namely, Kishan Lal. Later, the defendant laid foundation and constructed wall up to the height of five feet in the year 1991 and in this property, the plaintiff has no right, title or interest. The defendant had also set up a counter claim and prayed for an injunction against the plaintiff restraining him from interfering in the peaceful possession of the property owned by defendant.

The plaintiff did not file any replication to the written statement

and upon considering the pleadings, the trial Court framed six issues. After considering the evidence adduced by the parties, trial Court vide judgment and decree dated 02.11.2017 dismissed the claims of both the parties and aggrieved against that, the plaintiff and defendant filed their respective appeals. The appellate Court vide impugned judgment and decree dated 12.03.2021 upheld the judgment and decree dated 02.11.2017 only to the extent of dismissal of the suit filed by the plaintiff, whereas the remaining part was reversed while accepting the counter claim by the defendant. Aggrieved against the judgment and decree dated 12.03.2021 passed by the appellate Court, the plaintiff has filed these appeals.

Learned counsel for the appellant has argued that the case of the plaintiff is founded upon documentary evidence, i.e the sale deed dated 07.01.2014, which establishes plaintiff's ownership in respect of land comprised in killa No.34/15/1 measuring 2 kanals 6 marlas, whereupon the mutation (Ex.P-3) was also sanctioned. She has argued that the suit property was got demarcated from Local Commissioner-Virender Batra (PW-3), Naib Tehsildar and as per the said report, the appellant is in possession of the suit property. According to learned counsel, the defendant in his counter claim has set up a title in respect of plot measuring 500 square yards, on the basis of the sale deed (Ex.D-1), but this sale deed does not contain any particulars of the property purchased by him. It is pointed out that the vendor of defendant had derived title on the basis of a decree (Ex.D-6), but these two instruments are at variance, therefore, the trial Court erroneously dismissed the suit of the appellant, and further, the appellate Court accepted the counter claim without any cogent evidence. Learned counsel prays that the impugned judgment

warrants interference.

During the course of hearing, it is not disputed by Ms.Sharmila Sharma, learned counsel that previously on the same cause of action, the appellant had brought the civil suit for permanent injunction and the same was dismissed vide judgment and decree dated 10.06.2011 and the decree was also upheld by the first appellate court by dismissing his appeal on 02.03.2012. But according to the learned counsel, against the judgment and decree dated 02.03.2012, the appellant/plaintiff had preferred RSA No.1682-2012 and this Court vide order dated 04.07.2012 allowed the plaintiff to withdraw the suit on the statement of the counsel because it suffered from defect and at that stage, liberty was also granted to the plaintiff to file a fresh suit on the same cause of action.

After hearing learned counsel and considering the evidence on record, this Court finds that the previous suit filed by the plaintiff/appellant was decided on merits by the trial Court as well as the first appellate Court, but the learned counsel representing the plaintiff made a vague statement to withdraw the suit without giving explanation much less regarding any defect. By now, it is a settled law that a simpliciter statement is not enough for withdrawal of the suit and the Court is also not expected to accept such a statement without noticing the reasons permitting the plaintiff to file a fresh suit on the same cause of action. In the present case, the statement by the learned counsel for the plaintiff/appellant was made at the stage of second appeal and this alone is enough to show that once the suit as well as the first appeal were decided on merits, it suffered from no defect.

Ms. Sharmila Sharma, learned counsel for the appellant fairly

states that she represented the plaintiff in the earlier regular second appeal No.1682-2012 and had made a statement only regarding defect in the suit, but had not identified or explained the defect. She fairly states that pursuant to the order dated 04.07.20125 passed by this Court, plaintiff filed the fresh plaint reiterating the averments of the first suit and in addition, only relied upon the report of the Local Commissioner dated 08.07.2012.

Apart from the above, even on merits, this Court finds that the trial Court as well as the appellate court have relied upon the vital admissions suffered by the appellant/plaintiff as the sale deed dated 07.01.2004 (Ex.P-2) or the demarcation report dated 08.07.2012 (Ex.P-1) do not give correct particulars of the suit property and the trial Court has given a specific finding that the site plan prepared by the local commissioner is not part of the report (Ex.P-2).

Besides, the appellate Court has found that the defendant has proved dimensions and boundaries of the plot owned and possessed by him on the basis of the Ex.D-1 and the plaintiff has failed to rebut the said evidence much less by proving his possession over the said part of the property. Thus, the appellate court has given justifiable reasons for reversing the impugned judgment and decree by the trial Court only to the extent whereby counter claim by the defendant was dismissed.

A perusal of the impugned judgment and decree passed by the appellate Court shows that the appellate Court has carefully examined the pleadings and evidence on record and conclusion drawn by it is based upon correct appreciation of evidence. The impugned judgment does not suffer from perversity, therefore, no interference is called for.

Before parting with the judgment, this Court deems it necessary to observe that in the earlier round of litigation based on the same cause of action, the plaintiff had mischievously withdrawn his civil suit at the stage of regular second appeal on 04.07.2012, on the ground that the suit suffers from a defect and filed the same suit without any material change, which resulted in wastage of precious time of the Courts. Concededly, the suit and even appeal stood decided on merits, and no such defect in the suit was ever raised either during trial or first appeal, therefore, at the stage of second appeal, the plaintiff was not justified in raising this ground in order to avail another opportunity to start the litigation afresh. Consequently, this Court is of the opinion that the plaintiff/appellant deserves to be burdened with costs.

In view of the above discussion, this Court has no hesitation in holding that these appeals are without any merit, which do not involve any substantial question of law, therefore, the same are dismissed with costs of Rs.25,000/-.

(MANOJ BAJAJ)
JUDGE

09.09.2022

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No