

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 21 of 1990 (O&M)

Date of decision : 13.2.2023.

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Bhajna @ Bhajan Singh and another

.....Appellants

vs.

Bakshi and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the parties.

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H. S. Madaan, J.

1. A perusal of the record goes to show that none of the parties have been putting in appearance for two consecutive dates of hearing and prior to that on 2.6.2017 as well as on 3.4.2017, nobody had appeared for the appellants. The case pertains to the year 1990, therefore, I am not inclined to adjourned it further, as such I proceed to dispose it of, after going through the record.

2. Briefly stated, facts of the case are that plaintiffs – Bakshi and Kabul, sons of Karam Chand, residents of Village Chak Sahbu, Tehsil Phillaur, District Jalandhar, had brought a suit for grant of mandatory injunction against defendants – Bhajna @ Bhajan Singh and his father Jiwan Singh, both residents of Village Chak

Sahbu, Tehsil Phillaur, District Jalandhar, on the averments that there is taur on the Northern side of the house of the defendants. The house of the defendants was constructed in the year 1970 and the wall of the house X, Y is jointly owned by the plaintiff and defendants is depicted in red colour in the site plan in the map. At the time of construction of the wall in the year 1970, plaintiffs had given Rs.450/- to the defendants as their share of construction. Some holes were kept in the wall for the purpose of placing wooden shatiries or the steel girders in case the plaintiffs was to construct building in the taur. No ventilators were provided in the wall X,Y at the time of construction but subsequently, the defendants made two ventilators in the wall 2-3 times, but with the intervention of the respectables of the village, those were got closed. Subsequently, the defendants again made the ventilators Mark A,B in the joint wall which open on the taur owned by the plaintiffs. The defendants did not remove the ventilators despite repeated requests of the plaintiffs to do so, giving rise to the cause of action to the plaintiffs to bring the suit.

3. Notice of the suit was given to the defendants, who put in appearance and filed a joint written statement contesting the suit, raising various legal pleas, on merits denying that the disputed wall is joint qua the parties, rather asserting that house of the plaintiff is more than 20 years old and the disputed wall was constructed by the defendants in their own plot by leaving space towards the plot of the plaintiffs, as the defendants had put ventilators towards that side. The defendants claimed that the wall in question exclusively belong to them and plaintiffs have no right or interest therein. The defendants

prayed for dismissal of the suit.

4. Plaintiffs filed replication controverting the allegations in the written statement and reiterating the averments made in the plaint. From the pleadings of the parties, following issues were framed :-

- 1) Whether the wall of the house XY marked AB is jointly owned by plaintiff and defendant? OPP
- 2) Whether the plaintiff is entitled to the injunction as prayed for ? OPP
- 3) Whether the plaintiff is estopped from the filing of the present suit by his act and conduct? OPD
- 4) Relief.

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. After hearing the arguments, the trial Court of Sub Judge, 2nd Class, Phillaur, decided issue No.1 in favour of the plaintiffs and against the defendants, holding that the wall in question is joint between the parties. Issues No. 2 was decided in favour of the plaintiffs and against the defendants, holding that the plaintiffs are entitled to injunction, and defendants had no right to open window in the wall which was existing on the land which was joint. Issue No.3 was not pressed at the time of arguments, therefore, the same was decided against the defendants and in favour of the plaintiffs. As a result of findings on the issues, vide judgment dated 20.11.1986, the suit of the plaintiffs was decreed

with costs.

7. Feeling aggrieved, by the said judgment and decree passed by the trial Court, the defendants had preferred an appeal before the District Judge, Jalandhar. That appeal, was assigned to Additional District Judge, Jalandhar, who vide judgment dated 16.9.1989, accepted the appeal partly observing that in view of the judgment in Sardari Lal Gupta vs. Siri Krishan Aggarwal, AIR 1984 Punjab and Haryana 439, the plaintiffs are not entitled to the mandatory injunction directing the defendants-appellants to close or remove the ventilators. However, the plaintiffs shall be at liberty to close the same. Plaintiffs were found entitled to the permanent injunction restraining the defendants-appellants from cementing the Dehans and Khans in dispute existing the the joint wall marked X,Y.

8. Still feeling aggrieved, the defendants have approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents, who had put in appearance, but subsequently, there had not been any representation on behalf of either of the parties. Therefore, the appeal is being decided, after going through the record.

9. I find that both the Courts below, on the basis of the pleadings of the parties and evidence adduced by them, have returned a concurrent finding that the wall in question is jointly owned by the plaintiffs and the defendants and there has been Dehans and Khans, existing therein to enable the plaintiffs to put girders etc. therein, in case they wanted to raise any construction.

The claim of the defendants that the wall was exclusively owned by them was joint. The trial Court had decreed the suit of the plaintiffs in toto, but in appeal, learned Additional District Judge, had modified the judgment and decree, considering that the defendants might have got ventilators in the wall, but the plaintiffs have right to use the same by raising construction.

10. Further, the defendants were restrained from closing the dehans and khans in dispute. I do not see any reason to differ with the conclusion arrived at by the learned Additional District Judge, Jalandhar.

11. As a matter of fact, no substantial question of law arises in the present appeal.

12. The appeal is found to be without any merit and the same stands dismissed accordingly.

13.2.2023
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(H.S. Madaan)
Judge

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