

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

RSA-396-1991 (O&M)

Date of decision: 18.01.2023

Mahender Singh

...Appellant

Versus

Mool Chand and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: None for the appellant.

Mr. Amit Jain, Sr. Advocate with

Mr. Karanbir Singh, Advocate for the respondents.

H.S. MADAAN, J. (Oral)

As per office report, appellant has been served through his son but has not turned up. Since the appeal is more than 31 years old, I proceed to decide it after hearing counsel for the respondents and going through the record.

Briefly stated facts of the case are that plaintiff Mahender Singh had brought a suit for grant of permanent injunction against defendant Mool Chand and others, contending that he is owner in possession of the house situated near Hathin Gate, Palwal along with open land towards west of his house and apertures of his house were opened towards the vacant land in question. He is in possession of that land and defendants threatened to dispossess him there from by raising

construction.

2. On notice, the defendants appeared and refuted the assertions in the plaint and claiming themselves to be owner in possession of that property. They denied the existence of house of the plaintiff as claimed by the plaintiff in his pleadings. According to the defendants, they have a right to raise construction in the suit property of which they are the owners.

3. The plaintiff filed replication, controverting the allegations in the written statement whereas reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were framed:-

- 1. Whether the property in question is owned and possessed by the plaintiff and whether he has raised construction over portion ABCD and has left portion CEFD for egress and ingress to his property? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no locus standi to file this suit? OPD*
- 4. Whether the plaintiff is estopped by his own acts and conduct from filing this suit? OPD*
- 5. Relief.*

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the trial Court decided issues No.1 to 4 in favour of the plaintiff and vide judgment and decree dated 15.09.1989, suit of the plaintiff was decreed, restraining the defendants from raising construction over the disputed portion and from interfering in right of

the plaintiff to use the suit property for ingress and egress to his house by the trial Court of Addl. Senior Sub Judge, Palwal.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendants had preferred an appeal before District Judge, Faridabad, which was assigned to Addl. District Judge, Faridabad, who vide judgment dated 16.01.1991 accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff

7. Now it was turn of the plaintiff to feel aggrieved and he has approached this Court by way of filing the present Regular Second Appeal. Though, he was being represented by counsel earlier but subsequently, nobody has put in appearance on his behalf, though notice was issued to him and he was duly served but he has not turned up.

8. I have heard learned counsel for the respondent besides going through the record and I do not find any merit in the appeal. The trial Court had ignored certain important aspects and facts while decreeing the suit of the plaintiff whereas the Ist Appellate Court considered the facts and circumstances of the case minutely and analyzed the evidence produced by the parties properly while coming to the conclusion that the plaintiff has no title to the vacant land whereas the defendants come out to be owners of that piece of land having purchased it, therefore, they have got their right to use that property. The plea taken by the plaintiff that he has no other access to

his house except through the site in dispute was also found to be wrong, observing that he can have access to his house from Sohna road. The plaintiff had neither pleaded nor proved the right of way to his house through prescription by easement of necessity. Similarly it was not established that he had acquired right of easement by way of necessity to use the site in dispute as passage. The fact that the site in dispute was not closed with a boundary wall also pointed out that the plaintiff had no concern with that site. The findings returned by learned Addl. District Judge, Faridabad that the respondent is not proved to be owner of the site in dispute and he had no right to use it as a passage is quite justified, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Learned Addl. District Judge, was justified in setting aside the judgment and decree passed by the trial Court and dismissing the suit of the plaintiff. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

18.01.2023

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(H.S. MADAAN)
JUDGE

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