

RSA-457-2021 (O&M)

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2023:PHHC:068125

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-2615-C-2021 in/&
RSA-457-2021 (O&M)
Date of Decision :11.05.2023

Pritam Singh

....Appellant

Versus

Madanpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.S. Bains, Advocate for the appellant.

* * *

Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed challenging the concurrent findings of the Courts below by which, the suit filed by the appellant-plaintiff seeking permanent injunction has been dismissed.

Learned counsel for the appellant-plaintiff submits that the suit was filed by the appellant-plaintiff so as to restrain the respondent/defendant from raising any construction upon the common wall, which existed between the property of the appellant-plaintiff and the respondent-defendant but the suit filed by the appellant-plaintiff has been dismissed by the trial Court vide judgment and decree dated 20.08.2016 without appreciating the correct facts. Learned counsel for the appellant further submits that even the appeal filed by the appellant-plaintiff challenging the judgment and decree of the trial Court dated 20.08.2016 has also been dismissed by the lower Appellate Court vide judgment and decree dated 26.02.2021.

On being asked to point out the perversity in the findings

recorded by the Courts below, learned counsel for the appellant-plaintiff has not been able to point out any perversity in the findings recorded by the Courts below keeping in view the evidence and facts, which have already come on record.

Learned counsel for the appellant-plaintiff submits that the appellant-plaintiff is entitled for relief keeping in view the evidence which has come on record meaning thereby, the appellant-plaintiff intends to argue the case again so that this Court should re-appreciate the facts to arrive at a different conclusion than the one already arrived at by the Courts below. This is not permissible in the regular second appeal and only the perversity in the findings keeping in view the evidence which already came on record is to be seen while adjudicating the regular second appeal.

Even otherwise, it has already come on record that there is 9 inches wall separating the property of the appellant-plaintiff and respondent-defendant. Learned counsel for the appellant-plaintiff concedes that the 9 inches wall belongs to the appellant-plaintiff and respondent-defendant in equal share.

It may be noticed that the said wall was constructed by the appellant/plaintiff as he had constructed his property prior to the construction undertaken by the respondent-defendant. Hence, respondent-defendant was entitled to use 4.5 inches of the common wall of his share while constructing his property.

Learned counsel for the appellant-plaintiff has not been able to point out that respondent-defendant has used more than 4.5 inches of the common wall while constructing the property rather in the evidence it has

already come on record that the appellant-plaintiff monitored the construction being undertaken by the respondent-defendant and he has not raised any grievance at the time when the construction was being done and the present suit was filed only after the period of 5-6 years of the construction being completed by the respondent-defendant. That being so, once, the construction being done by the respondent-defendant was being monitored by the appellant-plaintiff and he has not raised any objection at that time—which fact shows that construction undertaken by the respondent-defendant was within his own property without causing any prejudice to the appellant-plaintiff.

Even otherwise, no construction undertaken by the respondent-defendant which causes prejudice to the appellant-plaintiff has been brought to the notice of this Court even during the course of hearing.

No other argument has been raised.

Keeping in view the fact noticed hereinbefore as no perversity in the findings recorded by the Courts below could be pointed out by the learned counsel for the appellant-plaintiff, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

CM-2615-C-2021

Application is also dismissed.

May 11, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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