

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1956-2022 (O&M)

Decided on:-09.10.2023

Bachan Singh

....Appellant.

vs.

Paramjit Kaur

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gaurav Dutta, Advocate and
Mr. Vaibhav Bhargav, Advocate,
for the appellant.

HARKESH MANUJA J. (Oral)

CM-10376-C-2023

Application is allowed as prayed for. Testimony (examination-in-chief and cross-examination) of PW-2 Baljinder Singh, Draftsman Judicial Complex Dera Bassi and affidavit (Annexure A-5) is taken on record, subject to all just exceptions.

Main case

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 13.11.2017 and 09.05.2022 passed by the Courts below, whereby, suit for permanent injunction filed at the instance of respondent-plaintiff, has been decreed.

2. Briefly stating, the respondent-plaintiff filed a suit for permanent injunction with a prayer for restraining the appellant-defendant or his agents/representatives from interfering or encroaching upon the 'bara' in question, besides the passage, as detailed in the plaint, by way of raising any

type of construction or in any other manner.

3. On the other hand, the appellant-defendant contested the suit while filing a detailed written statement, having denied that the area mentioned as ABCD in the plaint was a passage leading towards the '*bara*' being claimed by respondent-plaintiff to be her ownership.

4. The Trial Court vide impugned judgment and decree dated 13.11.2017, decreed the suit filed at the instance of respondent-plaintiff. Aggrieved thereof, appellant-defendant filed first appeal, however, the same was dismissed by the learned Additional District Judge, SAS Nagar (Mohali), vide judgment and decree dated 09.05.2022.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant submits that though the present suit was for permanent injunction, yet the respondent-plaintiff claiming ownership over the suit property, was required to establish the same and in the absence thereof, the suit could not have been decreed. He further submits that the respondent-plaintiff failed to discharge the primary burden fastened upon her as prescribed under Section 101 of the Indian Evidence Act, 1872. He also points out that the suit for permanent injunction could not have been decreed merely on the basis of site plan as some semblance of right was required to be established by the respondent-plaintiff over the suit property.

6. I have heard learned counsel for the appellant and perused the paper book. I am unable to find substance in the submissions made on behalf of the appellant.

7. In the present case, though a plea of ownership has been raised

by the respondent-plaintiff in her plaint, however, none of the parties ever pressed for any issue qua title over the suit property and thus, the bone of contention between the parties remained qua the relief of permanent injunction only. Besides it, none of the Courts below even went conclusive qua its adjudication upon the title of the suit property and rightly so, in a plaint for permanent injunction, the Courts below while adjudicating upon the lis, were primarily concerned with the factum of possession over the suit property only, regarding which a concurrent finding of fact has been recorded by the Courts below in favour of respondent-plaintiff, based on the material available on record.

8. The factum of existence of passage adjoining the 'bara' in question besides opening of door therein has even been admitted by the appellant-defendant in his written statement, the relevant portion thereof is reproduced hereunder:-

“The said bara of defendant is adjoining to the house of answering defendant and answering defendant using full fruits of this property and there is a passage of father of plaintiff near by the said bara and plaintiff taking the advantage of said door/passage towards eastern of said bara, the plaintiff wants to occupy the said bara illegally and forcibly under the garb of present false and frivolous suit filed by the plaintiff.”

Further the possession of respondent-plaintiff over the 'bara' has been established on record from the examination of plaintiff witnesses (PW1 to PW3), who have even proved the site plan and their testimony has remained un-impeached. On the other hand, appellant-defendant has not even proved the site plan in defence. No part of pleadings or any document

has been referred, to contend that there has been any misreading of pleadings or the evidence available on record or some relevant material has been ignored by the Courts below. In the absence thereof, no interference is warranted in the concurrent findings of fact recorded by the Courts below.

9. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits, is thus, dismissed.

10. Pending application, if any, shall also stands disposed of.

09.10.2023

sonika

(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No