

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

**RSA-5932-2019 (O&M)
Date of Decision : 24.08.2023**

Satish Kumar

..... Appellant

Versus

Kailash Chand

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. J.P.Sharma, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

1. This is defendant's second appeal against the concurrent findings recorded by the trial Court and the First Appellate Court.

2. The suit filed by the respondent-plaintiff was dismissed by the Court of Civil Judge (Junior Division), Narnaul vide judgment and decree dated 01.09.2016. However, the appeal filed against the said judgment and decree was allowed by the Court of Addl. District Judge, Narnaul vide judgment and decree dated 21.08.2019 and the suit filed by the respondent-plaintiff was decreed.

3. The respondent-plaintiff filed a suit for permanent injunction restraining the appellant-defendant from raising any construction on the Eastern side of street (*rasta*) measuring 11 feet 9 inches depicted by the alphabets 'GHIJ' in the site plan annexed with the plaint and situated in

A decree for mandatory injunction was also sought against the appellant-defendant directing him to dismantle the wall (doli) erected by him on the suit property.

4. It was the case of the respondent-plaintiff that a street abutted his house on the Southern side. The respondent-plaintiff had purchased the house from its erstwhile owner Sher Singh. The street was in continuous use and occupation of the vendor of the respondent-plaintiff and it had been utilized by the respondent-plaintiff also for ingress and egress from his house. It was averred that the appellant-defendant had been interfering in the use of the said street by respondent-plaintiff without having any right to interfere as the street had been got constructed by the Gram Panchayat. As per the respondent-plaintiff, a wall had been constructed by the appellant-defendant few months prior to the filing of the suit with a view to obstruct the movement of the respondent-plaintiff. When the appellant-defendant was confronted and was refrained from obstructing the street etc., he did not budge, leading to the filing of the suit.

5. The appellant-defendant did not put in appearance before the trial Court as a result of which he was proceeded against ex parte.

6. The respondent-plaintiff produced oral and documentary evidence in support of his claim. However, the trial Court dismissed the suit filed by the respondent-plaintiff holding that the clear identity of the suit property had not been established.

7. In appeal, the First Appellate Court accepted the version of the respondent-plaintiff, allowed the appeal and decreed the suit. It was held

by the First Appellate Court that the oral and documentary evidence produced by the respondent-plaintiff was sufficient to prove his case.

8. Aggrieved by the said decision of the First Appellate Court, the present appeal has been preferred.

9. I have heard learned counsel for the appellant and have also perused the paper book.

10. Learned counsel for the appellant-defendant has submitted that the First Appellate Court erred in allowing the appeal and decreeing the suit filed by the respondent-plaintiff. It has been contended that the trial Court had considered the matter from the right perspective and had held that the respondent-plaintiff had not been able to prove his case. Learned counsel has submitted that the First Appellate Court relied upon the untrustworthy evidence led by the respondent-plaintiff in arriving at the conclusion that the suit deserved to be decreed.

11. I have considered the submissions made by learned counsel for the appellant.

12. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including **Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545**, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold

the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92 respectively.

13. Reverting to the present case, the appellant-defendant chose not to appear before the Courts below. He was proceeded against ex parte not only before the trial Court but also before the First Appellate Court. The respondent-plaintiff, therefore, produced ex parte evidence. The same was found to be cogent enough to prove the case of the respondent-plaintiff. Four witnesses examined by the respondent-plaintiff, duly proved his case, as has been held by the First Appellate Court. The site plan was proved. Neighbours deposed in evidence. The issue of ownership was not required to be decided in a suit for permanent injunction. It was also found that the street in question was duly vested in the Gram Panchayat as it had been got metalled from Gram Panchayat's funds. It was also found that the street in question had been existing for the last more than 30 years and was being used by all neighbours whose houses abutted the street and the appellant-defendant by taking law in his own hands, had closed the street. Under the circumstances, the injunction was granted.

14. This Court does not find any reason to interfere in these findings of fact recorded by the First Appellate Court without any factual infirmity having been pointed out in the same by learned counsel for the appellant-defendant.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

24.08.2023
mamta

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