

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(108)

RSA No. 319 of 2022 (O&M)
Date of Decision : 10.01.2023

Devinder @ Durender Kumar and another

...Appellants

Versus

Sukhbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surinder Singh Virk, Advocate for the appellants.

Harsimran Singh Sethi J. (Oral)

In the present appeal, the challenge is to the order passed by the trial Court dated 10.08.2017 by which the suit filed by the respondent-plaintiff was decreed and a direction was given to demolish the wall, which has been constructed by the appellants-defendants over khewat no. 24, khatoni no. 41, rect. no. 49 killa no. 7/1/1, which was in the cultivating possession of the respondent-plaintiff as well as the order passed in appeal by the lower appellate court dated 01.10.2021 by which, the appeal filed by the appellants-defendants has been dismissed.

Learned counsel for the appellants argues that nothing has come on record that the wall constructed by the appellants-defendants is on the land, which was in the possession of the respondent-plaintiff hence, the demolition of the same, as ordered by the trial Court upheld by the lower

appellate court, was beyond the scope of pleadings and the evidence hence, the judgments of the Courts below are liable to be set-aside.

I have heard learned counsel for the appellants and have gone through the record with his able assistance.

On being asked, whether at any given point of time either in the written statement or in the evidence produced by the appellants-defendants, any document was produced that the wall so constructed was not in khewat no. 24, khatoni no. 41, rect. no. 49, killa no. 7/1/1 situated at village Badoli, District Panipat, learned counsel for the appellants-defendants has not been able to rebut the same that nothing has been mentioned by the appellants-defendants qua the said fact. Rather, learned counsel for the appellants has not been able to rebut the fact that the factum of the plaint that the wall constructed by the appellants-defendants was on the land described in the civil suit, stood admitted. That being so, once it is conceded that the averments in the civil suit qua the construction of a wall on the land in a particular place was admitted by the appellants-defendants, no finding was required on the said issue by the Courts below being an undisputed fact. Rather, the only objection to the prayer raised by the appellants herein was that they are co-sharers in the suit land and construction of the wall at the site already existed since many years. The said objection of the appellants-defendants has been dealt with by the Courts below on the basis of the evidence, which has come on record. It has already been held that on the basis of the evidence, keeping in view the admission of the appellants-defendants, the respondent-plaintiff was in possession of the suit land in khewat no. 24, khatoni no. 41, rect. no. 49, killa no. 7/1/1 situated at village

Badoli, District Panipat. That being so, the findings recorded by the Courts below cannot be treated as perverse keeping in view the evidence, which has come on record. Even otherwise, no perversity has been pointed out by the learned counsel for the appellants-defendants during the hearing qua the findings recorded by the Courts below. In the absence of any perversity, the factual aspect being raised by the appellants-defendants cannot be allowed at this stage, especially when the same stands admitted by the appellants-defendants in their written statement as well as in their testimonies.

No question of law arises in the present appeal for consideration of this Court and consequent no ground is made out for interference by this Court with the decision of the courts below.

Dismissed.

CM-684-C-2022

As the main appeal has been dismissed, the present application also stands dismissed.

January 10, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No