

Neutral citation No. 2023:PHHC:067626

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA 1091 of 2018 (O&M)

Date of decision : 10.5.2023

...

Puran Singh (since deceased) through his LRs

.....Appellant

vs.

Gurdev Singh (since deceased) through LRs and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.K. Saini, Advocate for the appellant

...

H. S. Madaan, J. (Oral)

CM No. 2718-C-2018

This is an application for bringing on record Teja Singh and Tejo, as legal representatives of deceased appellant Puran Singh.

Heard.

Allowed.

Main case.

1. Briefly sated, facts of the case are that plaintiff –Puran Singh, had brought a suit against defendant Gurdev Singh (since dead), represented by his LRs, as well as Soma Singh, a brother of Gurdev Singh, residents of village Jawandhey, Tehsil Bassi Pathanan, District Fatehgarh Sahib, seeking a decree for permanent injunction

against defendants and persons claiming under them, from interfering into the peaceful possession of the plaintiff over the suit property by opening the doors towards the property of the plaintiff by breaking the wall and also from making any type of encroachment upon that property illegally, forcibly, besides craving for grant of mandatory injunction directing the defendants to restore the suit property to its original position/condition existing at the time of filing the suit by way of closing the door and window openings on southern side of the suit property and by removing the projection measuring 12' x 2' – 3" in the said wall, depicted in the site plan attached with the plaint.

2. According to version of the plaintiff, the suit property is located within the village abadi and had been in possession of the plaintiff. The plaintiff had been using the same for tethering cattle and trees belonging to him are standing there. This property is adjoining to the property of the defendants. The plaintiff has also constructed a boundary wall in the side of the defendants. The defendants threatened to interfere into the peaceful possession of the plaintiff over the suit property by opening the door by breaking the wall towards the property of the plaintiff illegally and forcibly and to encroach upon the same, to which they have no right. Nevertheless on 21.5.2000, the defendants had made an opening of door and window in the wall towards the suit property in violation of stay order passed by the Court. They had opened another door on 3.12.2000 and have raised a projection in the said wall towards the

suit property.

3. On getting notice, the defendants appeared and filed written statement, contesting the suit, raising various legal objections, on merits contesting that the suit property is within the village abadi, but they denied that the plaintiff is owner or in possession of the same. The defendants claimed that they had been using the suit property for tethering their cattle and trees standing therein belong to them. The doors and windows of their house open towards the suit property. A fodder cutting machine is also installed therein. There is no boundary wall in the suit property as alleged and defendants are in peaceful, actual and continuous possession of such property. The openings are there since long. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

4. The plaintiff filed replication controverting the allegations in the written statement, reiterating the prayer made in the plaint.

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

1. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP

1-A. Whether plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP

2. Whether the suit is not maintainable? OPD

3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

4. Relief.

6. Parties were afforded adequate opportunity to lead evidence in support of their respective claims.

7. After hearing the arguments, the trial Court of Civil Judge (Senior Division), Fatehgarh Sahib., vide detailed judgment dated 12.11.2010, dismissed the suit of the plaintiff with costs.

8. Feeling aggrieved, the plaintiff had preferred an appeal before the District Judge, Fatehgarh Sahib, which was assigned to Additional District Judge, Fatehgarh Sahib, who vide judgment dated 11.7.2017 had dismissed the appeal, in the process up held the judgment and decree passed by the trial Court.

9. Still feeling aggrieved, the plaintiff has knocked at the door of this Court, by way of filing the present appeal. The plaintiff-appellant has expired during the pendency of the appeal. His LRs have been brought on record.

10. I have heard learned counsel for the appellant, besides going through the record and I find that both the Courts below, in view of the pleadings of the parties and analysing the evidence brought on record by the contestants, have returned clear findings that the defendants are in possession of the suit property and the opening of their house and projection are there towards such property. The plaintiff was not found to have any title to the suit property or being in possession thereof. The judgments passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of

law. I do not find any illegality or infirmity therein. No interference in such judgments is called for.

11. Thus no ground is there to upset such judgments, while hearing the present appeal. No substantial question of law has arisen in the present appeal.

12. The appeal is without any merit and stands dismissed accordingly.

10.5.2023		(H.S. Madaan)
chugh		Judge
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No