

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.778 of 2019 (O&M).

Date of Decision: 19.12.2023.

Ram Savrup

....Appellant.

Versus

Santosh Kumar through LRs Draupti and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Mukesh Yadav, Advocate for appellant.

Lalit Batra, J.

CM-1769-C-2019

This application under Section 149 CPC has been filed by applicant/appellant for affixing sufficient Court fee.

Application is allowed, as prayed for.

CM-1772-C-2019

This application under Section 151 CPC has been filed by applicant/appellant seeking condonation of delay of 36 days in re-filing the appeal.

In view of the grounds mentioned in the application, delay of 36 days in re-filing the appeal is condoned.

Application stands allowed.

CM-1779-C-2019

Exemption application allowed, as prayed for.

Main Appeal

This regular second appeal has been filed by appellant/plaintiff impugning the legality of judgment and decree dated 26.04.2018 passed by learned Additional District Judge, Narnaul, dismissing the appeal preferred by him against judgment and decree dated 14.05.2015 rendered by learned Civil Judge (Junior Division), Narnaul, vide which suit filed by appellant/plaintiff seeking relief of declaration-cum-perpetual injunction, was dismissed.

2. Precisely, the case of appellant/plaintiff is that on 27.02.1987 he had purchased a plot ad-measuring 110 square yards situate at Mohalla Gurunanakpura, Narnaul, from Harbanspal Singh and after obtaining requisite sanction from Municipal Committee, Narnaul, he raised construction of residential house thereon and left a *gali* (street) of about three feet towards southern direction of said plot for drainage of water. Defendant has nothing to do with the said *gali* (street) but he is adamant to install tin-shed and aperture over the wall of the plaintiff facing towards the street carved out by the plaintiff as has been reflected with the red colour in the site-plan annexed with the plaint. If defendant succeeds in his illegal designs, plaintiff will suffer an irreparable loss which cannot be compensated in any manner. Therefore, decree for declaration and permanent injunction was sought for restraining the defendant from installing any aperture; water outlets or any other structural activity over the suit property.

3. On notice of the suit, defendant put in appearance and filed

written statement wherein preliminary objections *inter alia* of maintainability of suit; locus standi; cause of action and estoppel etc. have been taken. On merits, it has been denied that plaintiff had left a *gali* (street) of three feet from his own plot for discharge of water. It is averred that defendant had purchased a dilapidated *Haveli* towards southern side of the plaintiff's plot from Sohan Lal in the year 2000 and at that time, the windows, drainage pipes opened towards the northern side. After having demolished the said *Haveli*, defendant had raised construction of two rooms and installed tin-shed in the year 2000 and made the projections on the remaining part of the said *Haveli* and laid pipes etc. for discharge of water. Denying other averments of the plaint, dismissal of the suit was prayed for.

4. On the rival contentions of the parties, following issues were settled:-

- (1) Whether plaintiff is entitled for the decree for permanent injunction, as prayed for? OPP.
- (2) Whether suit of the plaintiff is not maintainable in the present form? OPD.
- (3) Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
- (4) Relief.

5. Both the parties led oral as well as documentary evidence to substantiate their pleadings.

6. Considering the evidence available on the record and submissions made on behalf of the parties, learned Trial Court dismissed the suit of appellant/plaintiff with costs, vide judgment and decree dated 14.05.2015.

7. Feeling aggrieved by the judgment and decree dated 14.05.2015 passed by learned Trial Court, appellant/plaintiff preferred the appeal, which

was dismissed by learned Additional District Judge, Narnaul, vide judgment and decree dated 26.04.2018.

8. Being unsatisfied with the above said judgments and decrees rendered by the Courts below, appellant/plaintiff has preferred the instant regular second appeal.

9. The submissions made by learned counsel for appellant/plaintiff have been considered and record perused.

10. Learned counsel for appellant/plaintiff argued with vehemence that appellant/plaintiff by leading cogent and convincing evidence has proved that after having purchased land ad-measuring 110 square yards and getting the building plan sanctioned from Municipal Committee, Narnaul, raised construction of house thereon after leaving a space of three feet in width towards the southern side to facilitate the drainage of water. He further contended that defendant has no nexus whatsoever with the above said space of three feet in width towards the northern side of his house but he is adamant to install tin-shed and apertures over the wall of plaintiff and thereby bent upon to encroach upon the *gali* (street) left by plaintiff. He further contended that impugned judgments and decrees are based on conjectures and surmises. The pleadings of the parties and evidence led on the record have not been appreciated in right perspective. Learned Trial Court erred in dismissing the suit of appellant/plaintiff and even learned lower Appellate Court committed error while dismissing the appeal.

11. The arguments of learned counsel for appellant/plaintiff may appear to be attractive but the same are not convincing and meritorious.

12. The relevant extract of the judgment of learned lower Appellate Court is reproduced as under:-

“8. I have heard the parties and have taken myself through the record. Learned counsel for the plaintiff contended that from the sale deed and naksha the plaintiff has proved that he carved out gali (street about 3 feet) from his 110 square yards land. The said contention is hollow. The sale deed with naksha is only marked document Mark-A and not proved in accordance with law. Even otherwise no Local Commission was got deputed by plaintiff to carry out the demarcation to establish that said gali (street) is carved out from 110 square yards of the land of the plaintiff. Moreover the said sale deed is in the name of plaintiff's wife and she has not been arrayed as party in the case. The plaintiff, therefore, did not even have locus to file the present suit. Further it was contended by the plaintiff that he built his house after leaving the said gali (street) from his land and he got a map proved from Municipal Committee in this regard but even the said map is not an exhibited document. The same is at Page 217 of lower court file and the same does not even show that the disputed gali is a part of plaintiff's property.”

13. The legal position is not in dispute that mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue”. A bare perusal of the case file reveals that the main documents i.e. sale deed as well as building plan, on the basis of which, appellant/plaintiff is substantiating his claim over the suit property, those documents are not proved in accordance with law. In case *gali* (street) having

width of three feet falling on the southern side of the suit property ad-measuring 110 square yards was part and parcel of above said plot, then it was incumbent upon the appellant/plaintiff to get the above said area of suit property including the *gali* (street) demarcated so as to establish that *gali* (street) has been carved out from the total land measuring 110 square yards, whereas no such course was adopted by appellant/plaintiff. Apart from above, though it is categorical stand of appellant/plaintiff that he raised construction of house over the suit property after getting the building plan sanctioned from Municipal Committee, Narnaul, but learned lower Appellate Court after having scrutinized the record has given a firm finding that the building plan (map) stated to be issued by Municipal Committee attached with the Court record is not an exhibited document and the same does not reflect that disputed *gali* (street) is part of plaintiff's property.

14. In view of above, both the Courts below have rightly given firm findings that appellant/plaintiff has failed to prove that disputed site i.e. *gali* (street) having width of three feet and falling on the southern side of the house of appellant/plaintiff, is part and parcel of plot ad-measuring 110 square yards.

15. Learned counsel for appellant/plaintiff has failed to point out any illegality in the findings recorded by learned Trial Court as well as learned lower Appellate Court.

16. Thus, there being no reason to interfere in the findings recorded by learned Trial Court as well as learned lower Appellate Court and there being no merits in the appeal, the same is dismissed.

17. Since the main appeal itself has been dismissed, pending application(s), if any, also stand dismissed.

19.12.2023

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(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No