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

RSA-540-2021 (O&M)**Reserved on : 25.07.2024****Date of Decision : 21.08.2024**

Harender Pal Singh

....Appellant

VERSUS

Siri Chand & Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Keshav Pratap Singh, Advocate for the appellant.

Mr. Tanmoy Gupta, Advocate for the caveator-respondents.

ALKA SARIN, J.**CM-2985-C-2021**

1. For the reasons mentioned therein, the application for condonation of 31 days delay in filing the appeal is allowed. The delay of 31 days delay in filing the present regular second appeal is condoned.

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2. The present appeal has been preferred by the defendant-appellant challenging concurrent findings returned by the Trial Court and the First Appellate Court vide judgments and decrees dated 10.08.2016 and 19.10.2019 respectively.

3. The dispute is regarding a passage. The brief facts relevant to the present case are that the plaintiff-respondents filed a suit for mandatory injunction and permanent injunction averring that they alongwith their other

brothers are the owners in possession of the property, marked as ABCD in the site plan, situated at Railway Road, near Bus Stand, Palwal, District Palwal. The plots and shops of the plaintiff-respondents and their brothers are situated in the said property. There exists a passage/Gali 11' 6'' wide towards East of the shops and plot of the plaintiff-respondents which was a common passage for all and the doors of the shops and old house of the plaintiff-respondents also abut the said common passage towards the East. As per the plaintiff-respondents the said common passage was now a municipal passage and is not the private property of any individual. It was further averred that there had been litigation between the late father of the defendant-appellant namely Sh. Bharat Pal Singh and shop owners towards the East of the common passage namely Mulakh Raj and others in respect of the common passage. A civil suit was filed by Mulakh Raj and others against the late father of the defendant-appellant and another civil suit was also filed by the late father of the defendant-appellant against Mulakh Raj etc. Both the said civil suits were consolidated and were decided by the Court of Sh. V.S. Malik, Sub Judge Ist Class, Palwal vide a common judgement and decree dated 21.03.1983 holding that there is a passage 12 feet wide towards the West of the shops of Mulakh Raj etc. (passage in question) and 18 feet wide towards the South. The civil suit of Mulakh Raj etc. was decreed against the late father of the defendant-appellant and it was held that the said passage is a common passage and everyone has got a right to open doors and windows in the said passage. Though the defendant-appellant had no right, title or interest in the common passage, on 21.04.2013 he forcibly and illegally constructed a wall in front of the

door/entrance of the plaintiff-respondents despite the judgment and decree dated 21.03.1983 passed by the Court against his late father. Hence, the suit. In the written statement the defendant-appellant raised preliminary objections regarding maintainability, no cause of action, locus standi etc. It was stated that the passage was the private property of the defendant-appellant and the plaintiff-respondents had no right in it As per the defendant-appellant there exists a wall about 6 feet in height at the site and the plaintiff-respondents by claiming themselves to be the owners of the property adjoining the wall of the defendant-appellant were intending and threatening to make doors in the wall of the defendant-appellant. It was denied that the judgment and decree dated 21.03.1983 was binding upon the defendant-appellant. In the replication the contents of the written statement were denied and those of the plaint were reiterated.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is not entitled to decree for mandatory injunction as prayed for ? OPP
2. Whether the plaintiff is entitled to decree for permanent injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the plaintiffs has no locus-standi and no cause of action to file the present suit ? OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD

6. Relief.

5. The Trial Court vide judgment and decree dated 10.08.2016 decreed the suit of the plaintiff-respondents. Aggrieved by the same, an appeal was preferred by the defendant-appellant which appeal was also dismissed vide judgment and decree dated 19.10.2019. Hence, the present regular second appeal by the defendant-appellant. It may be mentioned here that before the First Appellate Court a separate appeal against the decision of the Trial Court was also filed by Surender Pal Singh, brother of the defendant-appellant though he was not a party before the Trial Court. The appeal of Surender Pal Singh was also dismissed by the First Appellate Court

6. Learned counsel for the defendant-appellant would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondents. It is submitted that the passage was the private property of the defendant-appellant, and he had the right to use it in the manner of his choice. Learned counsel for the defendant-appellant urged that since the passage fell within the private area of the defendant-appellant the plaintiff-respondents had no right to open their doors and windows on it. It was further argued that the judgement and decree dated 21.03.1983 was not binding on the defendant-appellant as neither he nor the plaintiff-respondents were party to that litigation. Per contra, learned counsel for the caveator/plaintiff-respondents has submitted that both the Courts have given concurrent findings of fact against the defendant-appellant that the passage was a common passage, and that the defendant-appellant had no right to restrict its usage.

7. I have heard the learned counsel for the parties.

8. In the present case both the Courts have found that the defendant-appellant had not been able to prove that the passage in dispute was his private property. The defendant-appellant could not establish from any cogent and reliable evidence that the passage was not a common passage but part of his private property. Though the earlier decision dated 21.03.1983 was not inter-parties, the fact remains that this very disputed portion was held to be a common passage. The Trial Court held that “*The previous judgment between the father of the defendant and the predecessors of the plaintiffs show that a matter of public nature came up before the court upon which the court declared that a 12 feet wide passage exists towards the west of railway road and 18 feet wide passage towards the south. The 12 feet wide passage is the same as that of the disputed property Mark-A shown in the site plan. The defendant has admitted the location of the disputed property which has been once declared to be a common passage. The previous civil judgment Ex.PW-2/1 even though not binding on this court still has a persuasive value. Resultantly, it is held that the disputed property is not a private property of the defendant and he has no right to construct the wall over the same. The plaintiffs have a right to open the gates and windows and apertures of their shops in the common passage, therefore, plaintiffs have successfully proved their claim and hence the issue no.1 & 2 is divided in favour of the plaintiffs and against the defendant*”. In the appeal, the First Appellate Court also noted that “*A careful perusal of the attested copy of sale deed Ex.PA dated 27.04.1972 executed by Bharat Pal Singh in favour of one Kewal Ram would go to show that he sold 200 square yards of the land in the measurement of 60 ft. x 30 ft., wherein in the*

boundaries of the sold property, in the western side, he showed the existence of passage 12 feet wide for common thoroughfare. Further more in the recital, he showed the plot of Pt. Sadhu Ram Shastri in the western side. The said Sadhu Ram Shastri was co-vendee with Roop Ram, by purchasing total land 1 kanal 3-1/4 marlas (23-1/3 marlas) from late Bharat Pal Singh. It is thus evident from the sequence of events that after the execution of sale deed on 10.04.1969 Ex.D-3, Bharat Pal Singh thereafter on 24.08.1972 sold his other properties to Kewal Ram, wherein the property involved in the suit has been described in the boundaries and in the recitals, as a passage thoroughfare, said conduct badly demolished the stand of the defendant that it was the individual property of Bharat Pal Singh and after his demise, his legal heirs including him are entitled to own the same". Thus, the portion in dispute was found to be a common passage dehors the judgement and decree dated 21.03.1983. Since the defendant-appellant has failed to prove that the passage is not a common passage and was infact his private property, the judgements and decrees passed by both the Courts cannot be faulted. Learned counsel for the defendant-appellant is unable to point to any cogent and reliable evidence on the record to show that the passage was part of his private property and that the plaintiff-respondents had no right to open doors and windows on the same. In the absence of such reliable evidence, the findings recorded by both the Courts are unimpeachable. No other point was argued.

9. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the

present case. The appeal being devoid of any merit is accordingly dismissed.

Pending applications, if any, also stand disposed off.

21.08.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO