



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.529 of 1992 (O&M)

Reserved On:24.05.2024

Date of Order:29.05.2024

Gurdial Singh

..Appellant

Versus

Sadhu Singh (since deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S.Rakhra, Advocate
for the appellant.

Mr. K.S.Sidhu, Sr. Advocate, with
Mr. Pragbir S. Dhindsa, Advocate
for the respondents.

ANIL KSHETARPAL, JCM-6188-C-2016

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Gurdev Singh and Sh. Gurnam Singh [respondent nos.1(i) and 4] mentioned in paragraph 2 and 5 of the application, is allowed, subject to all the just exceptions.

2. The amended memo of parties is taken on record.

3. CM stands disposed of.

MAIN

4. In this Regular Second Appeal, the plaintiff assails the correctness of First Appellate Court's judgment which in turn has reversed the judgment passed by the trial Court.

5. In order to comprehend the issues involved in the present case,



the relevant facts, in brief, are required to be noticed.

6. The appellant filed a suit for possession of a piece of land shown by letters ABCD in the site plan 'Ex.P2', with a consequential relief of mandatory and permanent injunction so as to direct defendant nos.1 to 4 to close their door mark "X" in the wall AB and to desist from obstructing the plaintiff from constructing his wall on the site along with wall AB so as to close the door mark 'X'. In substance, the plaintiff claims to have purchased the property vide registered sale deed dated 04.01.1967 from Sh. Mehma Singh, defendant no.5. The plaintiff claims to have constructed a manger on the aforesaid property, and he had been tethering his cattles apart from storing his goods but the defendants no.1 to 4, who are residing in the adjoining house, on the night between 03.04.1967, forcibly opened the door in the suit land and took possession. On the report made by the plaintiff, FIR was registered against defendants no.1 to 4. Defendant no.5 filed the written statement supporting the plaintiff's case.

7. The trial court decreed the suit while observing that the defendants had not become owners by way of adverse possession. However, the First Appellate Court reversed the judgment while recording finding that the plaintiff has failed to prove that his vendor Sh. Mehma Singh was owner of the property.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the scanned copy of the requisitioned record of the courts below.

9. The learned counsel representing the appellant submits that there is a registered sale deed executed in favour of the plaintiff dated



04.01.1967, which has not been challenged by the defendants at any point in time. He further submits that the First Appellate Court has erred in reversing the judgment passed by the trial court.

10. Per contra, the learned senior counsel representing the respondents submits that there is no ground to interfere with the elaborate judgment passed by the First Appellate Court.

11. This court has considered the submissions of the learned counsel representing the parties.

12. It may be noted here that Sh. Mehma Singh claims that the property in question had devolved upon him in the family partition which was duly incorporated in a 'Bahi' vide entry dated 23.03.1945. As per Sh. Mehma Singh and the plaintiff, in the aforesaid 'Bahi', the property is known as 'Ghasitu wala Makan'. However, on comparative examination of the directions of the said house with the layout plan Ex.P2, filed along with the plaint, it becomes evident that except property on the West, which is a public street, the other three directions towards North, East and South, do not match with each other. The burden lays on the plaintiff to prove the title of his vendor. He has failed to lead any other evidence. As per the memorandum of partition, it is established that the houses of defendants are located nearby. It has also come on record that the water pipes/channels/outlets of the defendants house open towards the site in dispute. Moreover, the plaintiff has also failed to prove that in the year 1967, the defendants forcibly made opening in their Western wall AB and took possession.

13. Upon re-appreciation of the evidence, the First Appellate Court



has recorded a finding of fact which is not shown to be suffering from any misreading, misinterpretation or non-reading of evidence.

14. Keeping in view the aforesaid facts and discussion, no ground to interfere with the judgment passed by the First Appellate Court, is made out.

15. Dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

29th May, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO