

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-731 of 1994 (O&M)
Date of Order:01.04.2024

Siri Lal

.Appellant

Versus

Somwati and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. A.P.Bhandari, Advocate
for the appellant.**

**Mr. Rakesh Sobti, Advocate
for respondent no.2.**

ANIL KSHETARPAL, J

1. This is the defendant's regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for grant of decree of permanent injunction restraining the defendants from dispossessing her from the portion marked with words 'CDE' in the layout plan Ex.PW6/2.

2. It is the plaintiff's case that she, after getting the building plan sanctioned from the Municipal Committee in the year 1963, constructed her house while leaving some portion in the rear to maintain some symmetry. She had fixed three windows and ventilators towards the disputed portion, however, the defendants are trying to encroach upon the same.

3. The defendants while contesting the suit claimed that they have perfected their title by way of adverse possession and the plaintiff did not construct her house. Defendant no.4 while filing the separate written statement, admitted existence of three windows and ventilators towards the plot in dispute.

4. Both the courts upon re-appreciation of evidence have concurrently found that the plot in dispute falls towards rear portion of plaintiff's house which is in the shape of triangular plot in between her house and municipal road. The house of the defendant (the appellant) is across the municipal road on the other side.

5. Both the courts upon appreciation of the evidence found that the plaintiff is entitled to decree of permanent injunction.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellant submits that the plaintiff (respondent herein) did not step into the witness box and hence adverse inference was required to be drawn against her. He further submits that the plaintiff has failed to prove that she has any passage to the plot which is located on the rear side of her house. Whereas the defendants are in continuous possession of the property as they are tethering their cattles and have also constructed the boundary wall.

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

9. From the perusal of the site plan Ex.PW6/2 as well as Ex.PW3, it is evident that the plot in question is located on the rear side of the plaintiff's house. She has fixed the windows and ventilators while constructing the house in the year 1963-64, whereas the defendant's house is located across the municipal road on the other side. The plaintiff has examined as many as 6 witnesses. The adverse inference against the plaintiff can only be drawn if she fails to produce sufficient evidence. In this case, both the courts have concurrently found that the plaintiff has proved

her case.

10. It is not necessary that in each and every case the court must draw adverse inference against the plaintiff for failure of the plaintiff to appear in evidence. A perusal of Ex.PW3 shows that there is a door which has been left behind by the plaintiff for entering the aforesaid area.

11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

12. Dismissed.

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

April 01, 2024
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(ANIL KSHETARPAL)
JUDGE

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