



IN THE HIGH COURT OF PUNJ AB AND HARYANA AT CHANDIGARH

201

RSA-252-1995 (O&M)
Date of Decision : 24.09.2024

Jagir Singh (deceased) through LRs and OthersAppellants

VERSUS

Harbans Singh (deceased) through LRs and AnotherRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mrs. Manveen Kahlon, Advocate for the appellants.
Mr. Ramesh Sharma, Advocate for respondent No.1(ii).

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the plaintiff-appellants against the judgment and decree dated 03.01.1992 passed by the Trial Court and the judgment and decree dated 26.08.1994 passed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for mandatory injunction for directing the defendant-respondents to remove the encroachment in the common passage/Gali bearing Khasra No.285 situated in village Rayya Khurd as shown in the Jamabandi for the year 1986-87 described in red colour in the site plan and for possession by way of partition of residential plot measuring 1 Kanal bearing Khasra No.283 as per Jamabandi for the year 1986-87 situated at Rayya Khurd by demolition of illegal construction raised by the defendant-respondents, which was beyond the share of the defendant-respondents, without the consent of the plaintiff-appellants. It was the case

set up that Fauja Singh son of Boota Singh son of Chanda Singh was the owner of $1/3^{\text{rd}}$ share. Bachan Singh and Ranga Singh sons of Nand Singh were owners to the extent of $2/9^{\text{th}}$ share. Lachhman Singh and Narinjan Singh sons of Ganga Singh were owners to the extent of $1/3^{\text{rd}}$ share. Jagat Singh son of Jhanda Singh was owner to the extent of $1/3^{\text{rd}}$ share in the plot measuring 1 Kanal bearing Khasra No.283 as per Jamabandi for the year 1986-87. Fauja Singh, Bachan Singh, Bagga Singh, Lachhman Singh and Narinjan Singh had transferred their share to Sewa Singh son of Sucha Singh and on behalf of his minor son Sewa Singh transferred 10 Marlas of the land from this plot to Jasbir Singh by way of registered sale deed dated 01.03.1982. Jagtar Singh, who was owner of $1/3^{\text{rd}}$ share in the plot in dispute, died about 8 years back and his property was inherited by plaintiff-appellants Nos.1 to 5. The plaintiff-appellants are co-sharers with defendant-respondent No.2 in plot No.283. There was a passage in this Khasra number which was 11 ft. wide comprised in Khasra no.285 measuring 3 Marlas shown as *Gair Mumkin Gali*. This passage was being used as common passage by all the plaintiff-appellants and the defendant-respondents jointly to go to the plot situated in Khasra No.283. The defendant-respondents illegally encroached upon the common passage bearing Khasra No.285 by constructing a veranda. The construction raised by the defendant-respondents was illegal. They were requested many times to remove the construction, but they did not agree. On notice, the defendant-respondents appeared. The stand taken by the defendant-respondents was that they were in continuous and uninterrupted possession of the land measuring 1 Kanal 1

Marla and that they obtained the electricity connection. It was further the case that defendant-respondent No.2 had purchased 3¼ marlas of the plot in Khasra No.283 vide sale deed dated 02.05.1985 executed by Sucha Singh, the guardian of Sewa Singh and 1 Kanal 1 Marla of land out of Khasra No.286 vide sale deed executed by Kishan Singh. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the defendants had made unauthorized construction in Khasra No.283, if so, its effect ? OPP
2. Whether defendant has made encroachment in the common passage ? OPP
3. Whether the suit is bad for non-joinder of necessary parties ? OPD
4. Whether the plaintiff has no locus standi to file this suit ? OPD
5. Whether the plaintiff is entitled to the mandatory injunction prayed for ? OPP
6. Whether the plaintiff is entitled to the permanent injunction as prayed for ? OPP
7. Relief.

3. The Trial Court dismissed the suit vide judgment and decree dated 03.01.1992 in the absence of any evidence led by the plaintiff-appellants. Aggrieved by the same an appeal was preferred which appeal was also dismissed vide judgment and decree dated 26.08.1994. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellants would contend that the Gali has been encroached upon by the defendant-respondents and that the evidence could not be led as the Bar was on strike on numerous occasions due to the situation prevailing in Punjab during the 1990s.

5. *Per contra* learned counsel for defendant-respondent Nos.1(ii) would contend that despite numerous opportunities the plaintiff-appellants failed to produce any evidence and their suit has rightly been dismissed.

6. I have heard learned counsel for the parties.

7. In the present case the suit was filed on 21.02.1989. The issues were framed on 27.05.1989. On 13.10.1989 two of the witnesses of the plaintiff-appellants were present, however, they were not examined as the lawyers were on strike. Thereafter, an application for amendment of the plaint was filed. Even after the amendment was allowed, numerous opportunities were given to the plaintiff-appellants to produce their evidence. On 12.11.1991 counsel for the plaintiff-appellants made a statement that a last opportunity be granted to produce the evidence and in case the plaintiff-appellants failed to produce any evidence the evidence may be treated as closed. The case was thereafter adjourned from 12.11.1991 to 03.01.1992 for evidence of the plaintiff-appellants. On 03.01.1992, again, no witness of the plaintiff-appellants was present nor was any summoned. The evidence was closed on 03.01.1992. Accordingly, the suit of the plaintiff-appellants was dismissed in the absence of any evidence. The appeal was also dismissed vide judgment and decree dated 26.08.1994.

8. Learned counsel for the plaintiff-appellants has not been able to convince this Court that the evidence could not be led due to the situation prevailing in the 1990s. It is apparent from the judgments and decrees passed by both the Courts that it was the plaintiff-appellants who, despite numerous opportunities, failed to lead their evidence. Infact, the counsel for the plaintiff-appellants made a statement that in case the evidence was not led the same may be treated as closed. Since no evidence was led even on 03.01.1992, the same was treated as closed and the suit was accordingly dismissed.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.09.2024
jk

(ALKA SARIN)
JUDGE

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