



RSA-539-1999 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-539-1999 (O&M)
Date of decision: 17.05.2024

RAM PAL

..Appellant

Versus

JANAM SINGH & ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

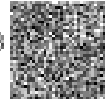
Present: Mr. A.P. Bhandari, Advocate
for the appellant.

Mr. Sukhandeep Singh, Advocate
for Mr. Lokesh Sinhal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1 In this regular second appeal, the plaintiff No.2 assails the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment of the trial Court.

2. As many as two plaintiffs filed the suit for permanent and mandatory injunction directing the respondents to remove encroachment over a passage. In substance, the dispute is about the correct width of the passage passing through the area. The plaintiff claims that the width is 16 feet, whereas, the defendants claim that the width is 14 feet. It has been pointed out by the defendants that the width of the street is not consistent as at one point, it was 14 feet then it reduced to 13 and ½ (half) feet, subsequently, it increased to 16 feet then it further reduced to 11.5 feet and so on.



3. The trial Court decreed the suit while drawing adverse inference against the defendants on the ground that they have not produced the copy of the sale deed.

4. Upon appreciation of evidence, the First Appellate Court has held that burden to prove the case lay on the plaintiffs, however, they failed to prove the same.

5 Sh. Giri Raj, one of the plaintiffs, suffered a statement before the trial Court on 22.12.1994, to the effect that there is no encroachment by the defendants and he is withdrawing the suit on his behalf.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the digital record.

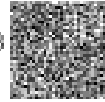
7. The learned counsel representing the appellant has made the following three submissions:-

i. DW-2 while appearing in evidence has admitted that the width of the existing passage is 16 feet.

ii. The defendants have failed to produce either the sale deed or the demarcation report. Hence, the onus to prove that the defendants did not encroach the aforesaid passage, lay on them.

iii. Moreover, the learned counsel representing the appellant while referring to the layout plan has submitted that the width of the street reduced in front of the defendant's house.

8. Per contra, the learned counsel representing respondent No.1 while referring to the statement of Sh. Giri Raj submits that the plaintiffs



evidence is not reliable. He further submits that the plaintiff No.2 has also made totally unreliable statement, which cannot be made a basis to decree the suit. He further submits that neither the Gram Panchayat was impleaded as a party nor any other substantive evidence was produced to prove that the width of the street was 16 feet.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. On perusal of deposition of DW-2, it is evident that the defendant has not admitted that the width of the street in the front of his house is 16 feet. Moreover, it is the plaintiffs, who came to the Court. The first burden lay on the plaintiffs to prove their case, however, apart from the oral evidence, which has been found to be unreliable, the plaintiffs have not produced any evidence. The onus of proof may shift, however, the burden of proof remains static. It was for the plaintiff to prove that there was encroachment by the defendant. Moreover, the defendant while filing the written statement has stated that the old wall of his house had fallen down and after getting the property demarcated, he reconstructed the wall exactly at the same place where the old wall existed. To prove this fact, he has examined the then Block Development Panchayat Officer (DW-3), who has categorically stated that the defendant constructed the wall exactly at the same place.

11. Additionally, it is the case of the defendants that the width of the street is not uniform or same. In such circumstances, it was incumbent on the plaintiff to prove that in the front of the defendant's house, the width of the street was 16 feet and not 14 feet. Neither the Gram Panchayat has been

impleaded as a party nor any evidence from the Gram Panchayat has been produced to prove the same.

12. Basically, the plaintiffs case is based on oral evidence. The findings of fact have been arrived at by the First Appellate Court in an elaborate manner, while appreciating the evidence, and in absence of perversity, this Court does not find it appropriate to interfere.

13. Dismissed accordingly.

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

May 17th, 2024

Av

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No