



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

109

RSA-4730-2019 (O&M)

Date of Decision : 14.10.2024

SAWINDER SINGH AND OTHERS

.... Appellants

VERSUS

SUKHA SINGH AND OTHERS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amardeep Singh, Advocate for the appellants.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellants challenging the concurrent findings recorded by both the Courts concerned.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for mandatory injunction averring in the plaint that their father, namely, Harbans Singh was owner in possession of a house which was purchased by him through agreement dated 25.08.1977. After the death of Harbans Singh, the plaintiff-appellants are residing in the said house and the defendant-respondents have no right, title or interest in the said house. The plaintiff-appellants filed a Civil Suit on 01.03.2016 against the defendant-respondents in which stay was granted, however, despite the order the defendant-respondents installed a gate between 15.07.2016 to 20.08.2016 by taking advantage of the absence of the plaintiff-appellants and violated the Court order by demolishing the wall of the house of the plaintiff-appellants. When the said fact was informed to the concerned Court, the Court concerned had stated to have told the plaintiff-appellants that the civil suit had become

infructuous and granted permission to withdraw the same and to file a suit for mandatory injunction. Hence, the present suit.

3. On notice the defendant-respondents appeared and took various objections regarding maintainability and concealment of material facts. It was averred that the street was a public street and that the plaintiff-appellants had no *locus standi* to file the present suit. It was further averred that the house of the defendant-respondent No.1 was adjoining to the house of the plaintiff-appellants and the door of the house of plaintiff-appellant No.1 is installed at Point-A and B which is open and is used by the general public. Defendant-respondents No.2 and 3 have another house adjoining the house of defendant-appellant No.1. The house of defendant-respondent No.1 is under construction and defendant-respondents No.2 and 3 used the door at Point-A and B. Replication was not filed.

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

1. Whether the plaintiffs are entitled for the relief of mandatory and permanent injunction, as prayed for ? OPP
2. Whether the suit of the plaintiffs is not maintainable ? OPD
3. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 21.12.2018. Aggrieved by the same an appeal was filed by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide

judgment and decree dated 27.03.2019. Hence, the present regular second appeal by the plaintiff-appellants.

6. Learned counsel for the plaintiff-appellants would contend that though the suit was for mandatory injunction, however, the same was dismissed only on the ground that the plaintiff-appellants failed to prove their ownership over the suit property. It is further the contention that the ownership was not to be seen and that it was duly proved on the record that the plaintiff-appellants were in possession of the suit property.

7. Heard.

8. In the present case the suit as filed by the plaintiff-appellants was for mandatory injunction for directing the defendant-respondents to remove the gate which was installed by them by demolishing the wall of the house of the plaintiff-appellants and for permanent injunction restraining the defendant-respondents from passing from the gate in dispute. As per the averment in the plaint in the suit earlier filed by the plaintiff-appellants the defendant-respondents had filed a written statement on 21.07.2016 after demolishing the wall of the house of the plaintiff-appellants. Accordingly, both the Courts concurrently held that no permission had been sought or granted by the Court to file a suit for mandatory injunction. Further still, both the Courts concurrently held that there was not an iota of evidence on the record to show that the plaintiff-appellants were owners in possession of the suit house as averred in the plaint. Reliance was placed by the plaintiff-appellants on an Urdu document which was marked as Mark-A. The only other document placed on the record to claim possession was the site plan, the

authenticity of which was also not proved in accordance with law. It was further held that the site plan alone cannot be held to sufficiently prove the ownership or possession of the suit house. Learned counsel for the plaintiff-appellants has not been able to convince this Court or to show any evidence lead by the plaintiff-appellants to show that they were in possession of the suit house and further that they are entitled to the relief of mandatory injunction.

9. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.10.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No