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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 27.02.2024.

Dalip Kumar

...Appellant.

Versus

Nirmal Vihar Welfare Association and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Raghav Bali, Advocate for
Mr. Pankaj Bali, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that the plaintiff is a
resident of house No.9, Nirmal Vihar, Super Market, Ambala Cantt. and is
residing in the said house since many years. Earlier the said property was
known as village Naggal, Tehsil and District Ambala but with an extension
of the urban area the said property is known as Nirmal Vihar, Super Market,
Ambala Cantt. and has been included in the Municipal Corporation. The
plaintiff is also running a small business in his house. About 10-11 months
prior to filing of the present suit, defendants illegally erected the gates on

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the places shown in the site plan attached with the plaint in red colour marked with letters AB, FG, HI. These three gates alongwith pillars were erected by defendant No.1 illegally, wrongly and against the rules and regulations. One gate marked with letters AB in the site plan was erected nearby the house of plaintiff. When the defendants refused to remove these gates then the plaintiff filed a complaint before the Deputy Commissioner, Ambala on 05.04.2011, who referred the matter to SDM, Ambala. The SDM, Ambala sought the report from defendant No.2 about these gates, but the SDM illegally and wrongly rejected the complaint of the plaintiff on the ground that the complaint under Section 133 Cr.P.C. was not maintainable and was covered under the public nuisance. Then the plaintiff moved an application before the Chairman, District Grievance Committee, Ambala on 30.08.2011, but no action was taken by the defendants to remove the said gates. Then defendant No.1 in order to harass the plaintiff and other family members started threatening to close gate No.3 so that the plaintiff could not approach his house through the way which is of short distance.

4. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 23.02.2016. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 04.07.2019. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff.

5. Learned counsel for the appellant/ plaintiff has contended that the both the Courts below have relied upon the documents produced by respondent No.1, which have not been properly proved on record and are

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inadmissible in the evidence. He has further contended that the plaintiff has proved on record that the respondent No.1 had installed the disputed gate and pillar on the passage, without having any authority and without getting the approval from respondent No.2. The Courts below have erroneously taken the view that earlier the Nirmal Vihar Colony was situated in village Naggal and the permission to erect the gates in the colony was accorded by the Gram Panchayat vide letter Ex.DW1/C. As there was no Gram Panchayat in village Naggal and the area in dispute was falling in Municipal Corporation, Ambala, so such approval was required to be taken from Municipal Corporation Ambala, but no such approval had been taken by respondent No.1. He has argued that respondent No.1 has also failed to prove that gate in question had been installed 6 years prior to filing of the suit. During his cross-examination, he has admitted that they were maintaining the accounts but no such bill was placed on record from which it could be proved that gate in question had been installed 6 years before filing of the present suit.

6. I have heard learned counsel for the appellant and gone through the record thoroughly.

7. The present suit was filed for granting of the mandatory injunction for directing the defendants to remove the gates as shown in the site plan attached with the plaint, on the ground that these had been illegally installed by defendant No.1. This fact has been admitted by plaintiff Dalip Kumar, while appearing as PW1, that he was also one of the members of the Nirmal Vihar Welfare Association and further also admitted that he had also received the call for attending the meeting regarding installation of gates,

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but he could not attend the same. Thus, the decision regarding installing of the gates was taken in the meeting and it was consensually passed by the members, who had attended the same. Defendant No.1 has also placed on record list Ex.D1 containing the details of the amount which had been collected for the purpose of installation of the gates, from the members. The perusal of this reveals that the plaintiff had also given an amount of Rs.1,000/- for the said purpose. From the entry in Ex.D2, cash receipt, it is proved that the plaintiff was also a consenting party at the time of the installation of the gates in the locality.

8. From Ex.DW1/C, it is proved that the prior permission of Gram Panchayat, Naggal was sought with regard to installation of gates as at that time the area was vested under the Gram Panchayat, Naggal. Though this contention has been raised by learned counsel for the appellant that at the relevant time the said area was vesting in the Municipal Corporation, Ambala, but nothing has been produced on record to substantiate the said plea. The trial Court has rightly observed that the gates in question have been installed only with the aim to provide a secured environment to the inhabitants of the locality and there is no encroachment on part of defendant No.1. If due to installation of the gate near his house the plaintiff has to take a longer route to reach his house then it cannot be taken as the reason to remove the gate in question while compromising with the security of the other residents of the locality. No other member of the locality has raised any objections or grievance regarding the installation of the said gates. The complaint filed by the plaintiff before the SDM, Ambala under Section 133

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Cr.P.C. was also dismissed vide order dated 13.06.2011 Ex.DW1/B.

9. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

10. Appeal sans merits stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

27.02.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No