



109

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

RSA-1120-2018 (O&M)**Reserved on : 26.11.2024****Pronounced on : 10.12.2024**

Gurdeep Singh

....Appellant

VERSUS

Sant Kumar & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H. S. Dhindsa, Advocate for the appellant.

ALKA SARIN, J.**CM-2766-C-2018**

1. For the reasons mentioned therein, the application for condonation of 7 days delay in refiling the present appeal is allowed. The delay of 7 days in refiling the present appeal is condoned.

RSA-1120-2018

2. The present appeal is by the plaintiff-appellant against the judgements and decrees dated 25.03.2011 and 04.07.2017 passed by the Trial Court and the First Appellate Court dismissing his suit.

3. Briefly, the facts are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondents from encroaching upon or raising any construction in Plot Nos.201, 213, 216, 220A, 220B with an area measuring 443.50 square yards in the revenue estate of the village Meharbaan, Tehsil and District Ludhiana and from encroaching upon a street. A further prayer for grant of mandatory injunction was also made for directing the defendant-respondents to remove

the wall from the portion which has been encroached upon by them. As per the plaintiff-appellant he had purchased the suit land from one Sohan Singh vide registered sale deed dated 28.04.1994 and had become owner in possession but the defendant-respondents were bent upon to encroach upon the suit land and had infact encroached upon a small portion of suit land. Hence, the suit. In the written statement the defendant-respondents raised preliminary objections regarding the suit being false and frivolous, not coming to Court with clean hands, maintainability, limitation, court fee, non-joinder and misjoinder of parties, etc. On merits it was denied that the suit land was purchased by plaintiff-appellant from Sohan Singh and the possession of the plaintiff-appellant over the suit land was also denied. It was submitted that the report of the Local Commissioner and the sale deed relied upon by the plaintiff-appellant did not tally with his pleadings and that the defendant-respondents had not encroached upon any area owned by the plaintiff-appellant and that they had raised construction in the area owned by them which they had purchased vide five sale deeds. Replication was filed reiterating the contents of the plaint and denying the averments made in the written statement.

4. The Trial Court framed the following issues :

1. Whether the plaintiff is in possession over the plot marked red colour in the site pan ? OPP
2. Whether there existed any street as shown in green colour in the site plan attached with the plaint ? OPP
3. Whether plaintiff is entitled to injunction as prayed for ? OPP

4. Whether plaintiff has not come to court with clean hands, if so, its effect ? OPD
5. Whether plaintiff is entitled to mandatory injunction as prayed for ? OPP
6. Whether the present suit is not maintainable ? OPD
7. Whether plaintiff has got no cause of action ? OPD
8. Relief.

5. Vide judgement and decree dated 25.03.2011 the Trial Court dismissed the suit of the plaintiff-appellant. His appeal was also dismissed by the First Appellate Court vide judgement and decree dated 04.07.2017. Hence, the present regular second appeal. The present appeal is accompanied with an application (CM-2767-C-2018) for production of additional evidence in the form of a demarcation report dated 05.05.1994.

6. Learned counsel for the plaintiff-appellant has argued that both the Courts have erred in dismissing his suit. It is urged that the plaintiff-appellant had proved his possession and the hostile acts by the defendant-respondents and therefore the suit ought to have been decreed. He submitted that the existence of the street was proved by the demarcation report sought to be produced now as additional evidence.

7. Heard learned counsel for the plaintiff-appellant.

8. The plaintiff-appellant had come to Court complaining that the defendant-respondents were encroaching the area owned by him as also were encroaching upon a street next to his plots and that they be restrained from doing so. The Courts below found that the plaintiff-appellant failed to

prove that the defendant-respondents were infact interfering in his possession. He also could not prove the existence of any street and his pleadings were found to be at variance with his evidence. The evidence led by the plaintiff-appellant and even his witnesses did not corroborate the stand taken by him. After a thread-bare discussion of the evidence led, the Trial Court ultimately held that *“Thus the plaintiff has to stand on his own legs and has to prove his case by leading the cogent and the convincing evidence unlike in the present case. Thus from the detailed legal and the factual matrix discussed above, this Court is of the considered view that the plaintiff has failed in proving the existence of street towards the eastern side of the plot. So no ground is made out for granting the relief of injunction in his favour”*. Even before the First Appellate Court the plaintiff-appellant failed to prove interference in his possession by the defendant-respondents or even the existence of the street.

9. Before this Court, along with the present appeal, the plaintiff-appellant has filed an application (CM-2767-C-2018) for production of additional evidence in the form of a demarcation report dated 05.05.1994 to prove the existence of a street as he has been non-suited on this count. However, this report is a mere photocopy and not even a certified copy. The application (CM-2767-C-2018) does not even spellout the reasons for not producing the report before the Trial Court or the First Appellate Court. The application does not even mention that the said report could not be produced earlier despite the exercise of due diligence. The application does not fulfill the requirements of Order 41 Rule 27 CPC and hence deserves to be rejected.

10. Learned counsel for the plaintiff-appellant is unable to point to any cogent and reliable evidence on the record to dislodge the concurrent findings recorded by both the Courts. He has been unable to point out how the defendant-respondents were interfering in his possession or the existence of a street next to the plots. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. No other point was argued.

11. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. The application (CM-2767-C-2018) for production of additional evidence is also dismissed. Other pending applications, if any, also stand disposed off.

10.12.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

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