



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110

RSA-3676-2018 (O&M)
Date of Decision : 30.07.2024

Karan SinghAppellant

VERSUS

Brahm DuttRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Parul Saini, Advocate for
Mr. Pritam Singh Saini, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 22.04.2015 passed by the Trial Court and the judgment and decree dated 09.05.2017 passed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed the present suit averring in the plaint that he is absolute owner in exclusive possession and peaceful occupation of the suit property since the time immemorial. The suit property on the southern side is bounded by house of Zile Singh and after the death of Zile Singh, his relative i.e. defendant had demolished the entire house and mischievously had threatened to reconstruct the same by encroaching upon the suit property specifically the wall marked by the letters 'DE' delineated in red colour in the site plan. Hence, the present suit for permanent injunction. On notice, the

defendant-respondent appeared and filed a written statement raising objections of maintainability and suppression of facts. On merits it was denied that the plaintiff-appellant is in exclusive possession and occupation of the wall in question. It was averred that the wall is a common wall wherein the defendant-respondent has the pre-existing interest and is in actual use, occupation and enjoyment since the time immemorial. Replication was not filed. On the basis of the pleadings the following issues were framed :

1. Whether the defendant is liable to be restrained from encroaching the wall in question, reflected by the letter 'DE' or any part of the suit property in any manner on the ground as alleged in the plaint ? OPP
 2. Whether the suit of the plaintiff is not maintainable ? OPD
 3. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
 4. Whether the plaintiff has no jurisdiction to file the suit ? OPD
 5. Relief.
3. The Trial Court vide judgment and decree dated 22.04.2015 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 09.05.2017. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit on illegal and erroneous grounds. It is urged that the plaintiff-appellant has been in peaceful possession of the wall and that the same is not a common wall and was thus entitled to the grant of injunction, as prayed for.

5. Heard.

6. In the present case the only point for determination is whether the wall in question marked by letters 'DE' in the site plan (Ex.P1) was being exclusively used by the plaintiff-appellant or was a joint wall. The only evidence produced by the plaintiff-appellant was the oral testimony. No documentary evidence was placed on the record. Both the Courts concurrently returned findings of fact that the plaintiff-appellant has failed to prove that the wall was being used exclusively by the plaintiff-appellant. In the absence of any evidence, no fault can be found with the judgments and decrees passed by both the Courts.

7. 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.

(ALKA SARIN)
JUDGE

30.07.2024
jk

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