



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4282-2018 (O&M)

Date of Decision : 18.09.2024

Ranbir Singh & Ors

... Appellant(s)

Versus

Siri Chand & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shiv Kumar, Advocate for the appellants.

ALKA SARIN, J. (Oral)

CM-11403-C-2018

This is an application for condonation of delay of 04 days in refiling the appeal.

For the reasons stated in the application, delay of 04 days in refiling the appeal is condoned. CM stands disposed off.

RSA-4282-2018

1. The present appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 30.09.2015 passed by the Trial Court vide which the suit of the plaintiff-appellants was partly decreed for permanent injunction and dismissed qua the relief of mandatory injunction. Aggrieved by the same, an appeal was preferred which was also dismissed by the First Appellate Court vide judgment and decree dated 14.11.2017.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed the present suit for permanent injunction as well as for mandatory injunction averring therein that the plaintiff-appellants are

owners in possession of a *gair mumkin gait* bearing Khasra No.329 measuring 10 marlas situated within the *abadi* of village Dhatir, Tehsil and District Palwal and shown with letters ABCDEF in the site plan. The defendant-respondents have a plot bearing Khasra No.330 towards the Eastern side of the plot of the plaintiff-appellants. It was further the case set up that the defendant-respondent No.2 had filed a civil suit for permanent injunction against the plaintiff-appellants averring therein that the plaintiff-appellants herein had tried to encroach upon his plot No.330. It was further the stand that the plaintiff-appellants never intended to encroach upon the land, however, during the pendency of the said civil suit the defendant-respondents wanted to encroach upon Khasra No.329 which was in possession of the plaintiff-appellants and they managed to encroach upon the land one year back and were further adamant on encroaching upon more area. A demarcation was conducted in the earlier civil suit which found that the defendant-respondents herein had encroached an area measuring 93 Sq. Yards from the Eastern side of Khasra No.329. On notice, defendant-respondent No.2 appeared and filed his written statement wherein a preliminary objection was taken that the suit was not maintainable as the wife of defendant-respondent No.2 was owner in possession of Khasra No.329 and that she was a necessary party but she had not been impleaded as a party. On merits it was pleaded that the plaintiff-appellants were neither owners nor in possession of the suit property and that the sale deed dated 08.01.1973 in their favour was null and void. The vendor did not have a clear title. Further allegations made in the plaint were denied.

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

1. Whether the plaintiffs are owners in possession of the suit property and the defendants have encroached 93 sq.yards of the land, if so its effect ? OPP
2. Whether the plaintiffs are entitled to injunction mandatory as well as prohibitory, as prayed for ? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiffs have no locus standi and cause of action to file the present suit ? OPD
6. Whether the plaintiffs have concealed the material facts from the court ? OPD
7. Relief.

4. The Trial Court vide judgment and decree dated 30.09.2015 decreed the suit for permanent injunction, however, dismissed the suit qua mandatory injunction holding that no injunction could be granted against a co-sharer. Aggrieved by the same, an appeal was preferred. The First Appellate Court vide judgment and decree dated 14.11.2017 dismissed the appeal holding that as per the demarcation report the suit property is stated to have been encroached upon by the wife of defendant-respondent No.2 who was not a party to the suit and so no relief of mandatory injunction could be granted in favour of the plaintiff-appellant for removal of the encroachment. Aggrieved by the same, the present appeal has been preferred by the plaintiff-appellants.

5. Learned counsel for the plaintiff-appellants would contend that

though the wife of defendant-respondent No.2 is the owner of the property, however, the property has been encroached upon by defendant-respondent No.2 who is in possession of the same and hence the Courts erred in not granting the relief of mandatory injunction.

6. I have heard the learned counsel for the plaintiff-appellants.

7. In the present case a specific objection was raised in the written statement filed by defendant-respondent No.2 that the wife of defendant-respondent No.2, who was owner in possession of Khasra No.329, was a necessary party. However, despite the said objection, no steps were taken by the plaintiff-appellants to implead the wife of defendant-respondent No.2 as a party. The relief of mandatory injunction being sought is against a person who is not a party to the suit. The learned counsel for the plaintiff-appellants has not been able to convince this Court that in the event of the person who is alleged to have encroached upon the property not being impleaded as a party, the Courts erred in not granting the relief of mandatory injunction.

8. In view of the fact that the person who is stated to have encroached upon the property was not impleaded as a party, no fault can be found with the judgments and decrees passed by 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. Pending applications, if any, also stand disposed off.

18.09.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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