

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

108

RSA-376-2019 (O&M)

Date of Decision : 07.02.2024

SANTOKH SINGH

.... Appellant

VERSUS

IQBAL SINGH

.... Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Samir Rathaur, Advocate for the appellant.

**ALKA SARIN, J. (ORAL)**

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 21.07.2016 passed by the Trial Court whereby the suit filed by him was dismissed and the judgment and decree dated 13.08.2018 passed by the First Appellate Court vide which the appeal filed by the plaintiff-appellant was also dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession of the suit property and for permanent injunction for restraining the defendant-respondent from raising any kind of construction in the encroached area i.e. 1-1/4 marlas which was alleged to have been forcibly and illegally encroached upon by the defendant-respondent out of Khasra No.36/6. It was further averred that the plaintiff-appellant was the owner of the property comprised in Khasra No.5/5, Khasra No.36/6 (0-9) situated in Village Bhagat Majra, Tehsil Kharar, District Mohali. The adjoining *barah* comprised in Khasra No.36/5 was owned by the defendant-respondent, namely, Iqbal Singh, who is his nephew. The defendant-respondent had constructed boundary wall on three sides of his

house and he did not construct the wall between Khasra No.36/5 and 36/6 with the intention to grab some portion of Khasra No.36/6. It was further averred that the defendant-respondent after constructing his house forcibly took possession of 5 feet of land on the northern side and 13 *gatha* long in triangular shape shown as ABC in the site plan of Khasra No.36/6 of the plaintiff-appellant and forcibly started filling foundation.

3. The defendant-respondent contested the suit by filing the written statement raising the preliminary objection that the suit was barred by the principle of *res judicata* and other grounds. Replication was filed.

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

- (1) Whether the plaintiff is entitled to the relief of possession as prayed for ? OPP
- (2) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
- (3) Whether the present suit is barred by principle of *res-judicata* ? OPD
- (4) Whether the plaint is not maintainable in the present form ? OPD
- (5) Whether the plaintiff has not come to the Court with clean hands ? OPD
- (6) Relief.

5. Both the Courts below concurrently found that earlier a suit for mandatory as well as permanent injunction was filed by the plaintiff-

appellant for restraining the defendant-respondent from interfering in his peaceful possession over the land situated in Khasra No.36/6 and for mandatory injunction directing the defendant-respondent for removing the construction over the suit land i.e. Khasra No.36/6 (0-9) whereas in the present suit the plaintiff-appellant had prayed for a decree of possession over the land comprised in Khasra No.36/6 (0-9) and for permanent injunction restraining the defendant from raising any kind of construction. Both the Courts concurrently found that the suit was barred by principles of *res judicata*. Aggrieved by the impugned judgments and decrees, the present regular second appeal has been preferred.

6. Learned counsel for the plaintiff-appellant would contend that the first suit was for mandatory injunction and the present suit is for possession and that in the earlier suit the Trial Court, while dismissing the suit, had held that the plaintiff-appellant ought to have filed a suit for possession and hence the present suit for possession was filed.

7. Heard.

8. In the present case earlier the plaintiff-appellant had filed a suit for mandatory injunction wherein a prayer was made for restraining the defendant-respondent from interfering in his peaceful possession over the land situated in Khasra No.36/6 and for mandatory injunction directing the defendant-respondent to remove the construction over the suit land i.e. Khasra No.36/6 (0-9). The said suit was dismissed vide judgment and decree dated 06.06.2011 holding that the plaintiff-appellant had failed to prove any encroachment having been made by the defendant-respondent on the *barah*

of the plaintiff-appellant nor any intention on the part of the defendant-respondent to encroach upon the *barah* of the plaintiff-appellant. Infact, it had come in the cross-examination of the plaintiff-appellant therein that the defendant-respondent had already constructed the boundary wall around his land and hence it was held that the suit for injunction did not lie. Once a specific finding had been returned qua the same property between the same parties that there was no encroachment, the present suit, which is for possession of the very same alleged encroached land, would be barred by the principles of *res judicata*. No liberty was granted by the Trial Court earlier that a fresh suit for possession be filed.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal, being devoid of merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

**07.02.2024**  
*Aman Jain*

**(ALKA SARIN)**  
**JUDGE**

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