

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-937-2019 (O&M)****Reserved on : 18.12.2024****Pronounced on : 07.01.2025**

Subhash Chander

....Appellant

VERSUS

Gulshan Sharma and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harminder Singh, Advocate for the appellant.

ALKA SARIN, J.**CM-2165-C-2019**

1. For the reasons mentioned therein, the application seeking condonation of 05 days delay in refiling the appeal is allowed. CM stands disposed off.

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2. The present appeal is by the plaintiff-appellant against the judgements and decrees dated 30.01.2017 and 13.09.2018 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 declaration, mandatory injunction and permanent injunction averring that he is the owner and in exclusive possession of a house which was purchased in equal shares by the father and the uncle of the plaintiff-appellant and later in 1975 the uncle sold his share in the house to the plaintiff-appellant. According to the plaintiff-appellant there is an 'open space' towards the western side of the above house, which is also a part of the house, in which a

staircase is constructed which is used by the plaintiff-appellant. The defendant-respondent No.1 has no connection or concern with the 'open space' but was threatening to install chowkhat and jangla (gate and window) etc. towards western side by breaking open the wall which is the exclusive ownership of the plaintiff-appellant. It was further averred that defendant-respondent No.2, without any legal right or authority and by use of force and threats, has put a surface of RCC over 'open space' which is a part and so as to make it look like a street. Defendant-respondent No.2 had forcibly dismantled and removed the toilet and bathroom of the plaintiff-appellant. It was further alleged that defendant-respondent No.1 had in collusion with defendant-respondent No.2 constructed a kitchen on a part of the street leading to the 'open space' of the house of the plaintiff-appellant. The defendant-respondent No.1 had encroached upon a part of the street and reduced the breadth of the street. Hence, the suit. In the written statement the defendant-respondent No.1 submitted that there was no 'open space' but a Gali Sare Aam in between the house of the plaintiff-appellant and the house of defendant-respondent No.3 which Gali is a public property and meant for common use of the general public and the Gali had been made pucca by the Municipal Council Bahadurgarh in the year 2008 and 2009. According to defendant-respondent No.1, the sale deed dated 30.07.1959 in favour of the father and uncle of the plaintiff-appellant clearly mentioned that towards the western side of the said house there is a door of the said house meaning that the alleged ownership of the plaintiff-appellant was upto the door of the house only and not beyond that point. It was further submitted that while executing the sale deed in favour of plaintiff-appellant in 1975 his uncle had made wrong particulars regarding dimensions of the house in order to grab

the land of the Gali Sare Aam in collusion with the plaintiff-appellant and that the land of Gali Sare Aam belongs to Municipal Council Bahadurgarh. It was denied that Gali Sare Aam, which the plaintiff-appellant claims is 'open space' is a part of the house and that construction of the stairs in the Gali Sare Aam did not give the plaintiff-appellant any title. It was denied that the kitchen had been constructed on part of the street leading to the 'open space' or that the defendant-respondent No.1 had encroached upon a part of the street. The kitchen had been in existence since long and the plaintiff-appellant had never raised any objection regarding the same. Defendant-respondent No.2 in its written statement denied knowledge about any alleged encroachment and also denied that the plaintiff-appellant had ever requested it for removal of the kitchen which is alleged to have been constructed on part of the street. Defendant-respondent No.3 adopted the written statement of defendant-respondent No.1. In his replication the plaintiff-appellant denied the averments of the written statements and reiterated those of the plaint.

4. The Trial Court framed the following issues :

1. Whether the plaintiffs is entitled to the decree of declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the decree for mandatory injunction as prayed for ? OPP
3. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for ? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form ? OPD

5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
6. Whether the plaintiff has concealed with true and material facts from the Court ? OPD
7. Whether the suit of the plaintiff is bad for mis- joinder and nonjoinder of the necessary parties ? OPD
8. Whether the suit of the plaintiff is bad for want of notice under Section 80 of CPC ? OPD
9. Relief.

5. Vide judgement and decree dated 30.01.2017 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 13.09.2018. Hence, the present regular second appeal.

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 is the owner of the house and 'open space' and defendant-respondent No.1 had no right or title in the same. As per counsel the defendant-respondent No.1 had encroached on a part of the public street and had also constructed a kitchen which was obstructing the ingress and egress of the plaintiff-appellant. It was submitted that in fact the suit should have been decreed and the possession of the plaintiff-appellant protected.

7. Heard learned counsel for the plaintiff-appellant.

8. In the present case both the Courts have found that the plaintiff-appellant had failed to prove that the 'open space' was owned by him. In the sale deed Ex.P2 there is no mention of any open space. The 'open space' has

been found to be part of Gali Sare Aam which had been made pucca by defendant-respondent No.2. Learned counsel for the plaintiff-appellant has not been able to point out to any evidence on the record to show that the kitchen has been constructed by defendant-respondent No.1 on part of the street and encroached on it. Defendant-respondent No.2 had denied any encroachment on the street. In the absence of any cogent and reliable evidence having been led by the plaintiff-appellant to show that he was owner of the 'open space' and that defendant-respondent No.1 had encroached upon a public street, no illegality has been committed by both the Courts in dismissing his suit. No other point was argued.

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 in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

07.01.2025
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No