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RSA-561-2019 (O&M)

MAHANT MAHAVIR DASS
V/S
ISHWAR SINGH & ORS

Present: Mr. Sahil Mehra, Advocate for
Mr. Nipun Vashist, Advocate for the appellant.

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The present appeal pertains to the year 2019. Repeatedly it has been adjourned on the request of the learned counsel for the appellant. Today, again, a request for an adjournment has been made on behalf of the arguing counsel for the appellant on the ground that he is unwell. The learned proxy counsel states that the matter may be kept for Monday i.e. 03.02.2025 and that the arguing counsel for the appellant would argue the matter on the adjourned date.

Adjourned to **03.02.2025**.

27.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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integrity of this order/judgment.
High Court Chandigarh

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2403-2019 (O&M)
Date of Decision : 27.01.2025

Baljit Singh ... Appellant(s)

Versus

Rattan Chand & Anr ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Manoj K. Sharma, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-6430-C-2019

1. This is an application for condonation of delay of 10 days in refiling the appeal.

2. For the reasons stated in the application, delay of 10 days in refiling the appeal is condoned. CM stands disposed off.

RSA-2403-2019

3. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 29.10.2015 and 07.09.2018 passed by the Trial Court and the First Appellate Court, respectively.

4. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for mandatory as well as permanent injunction averring therein that the houses shown in green colour in the site plan attached with the plaint were owned by the plaintiff-appellant and the house of the defendant-respondents were situated near the house of plaintiff-

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appellant. A street which was marked as ABCDEFG bifurcates the house of both the parties which had been brick paved and was a public street. It was further the case set up that the plaintiff-appellant had been using the street as approach to both of his houses. It was further the case set up that the defendant-respondents had encroached upon the street by constructing a toilet and bathroom at point Marks 'X' and 'Y' and also constructed a wall at point EF, whereby they blocked the entry of one of the houses of the plaintiff-appellant from the street side. The matter was reported to the Gram Panchayat who held the matter in favour of the plaintiff-appellant. Hence, the suit. Defendant-respondent No.1 filed written statement raising various preliminary objections. On merits it was stated that the street marked as ABCDEFG was owned and possessed by the defendant-respondents and the plaintiff-appellant had no concern with the same. It was further averred that the area marked as ABCDEFG was owned and possessed by defendant-respondent No.1 – Rattan Chand – for the last more than 60 years and that the Gram Panchayat was never in possession of any portion of the suit property. Similar written statement was filed by defendant-respondent No.2. On the basis of the pleadings the following issues were framed :

1. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP

3. Whether the suit is not maintainable ? OPD

4. Whether the plaintiff has got no locus standi to bring and file the present suit ? OPD

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5. Whether the plaintiff has not come to the court with clean hands ? OPD

6. Whether the plaintiff has got no cause of action to bring and file the present suit ? OPD

7. Whether the site plan is incorrect ? OPD

8. Whether the present suit is undervalued for the purposes of court fee and jurisdiction ? OPD

9. Whether the present suit is bad for non-joinder of necessary parties ? OPD

10. Relief

3. The Trial Court dismissed the suit vide judgment and decree dated 29.10.2015. Aggrieved by the same, an appeal was preferred before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 07.09.2018. Hence, the present regular second appeal.

4. Learned counsel for the appellant would contend that both the Courts have erred in dismissing his suit. It is urged that the street was the only access to the house of the plaintiff-appellant and that since the street had been encroached, the access to the house of the plaintiff-appellant was blocked and therefore the suit deserved to be decreed.

5. I have heard the learned counsel for the plaintiff-appellant.

6. In the present case both the Courts concurrently found that no document had been produced on the record by the plaintiff-appellant or even by the Panchayat Members who were examined by the plaintiff-appellant to show that the portion alleged to have been encroached upon was ever used for the public. It was further found that there was no date on which the

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alleged construction is stated to have been made. Even the *Aks Shajra* produced on the record by the defendant-respondents as Ex.D2 and the jamabandi for the year 2011-12 as Ex.D3 reveal that the properties fell in a khasra number and there was no public passage as had been alleged by the plaintiff-appellant. In the absence of any cogent evidence having been led by the plaintiff-appellant to show that the passage was a public passage which had been encroached upon by the defendant-respondents, no fault can be found with the judgments and decrees passed by both the Courts. No other point was argued.

7. In view of the above, 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.

27.01.2025 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

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

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