

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.789 of 1991(O&M)
Reserved on:05.12.2024
Date of Order: 14.01.2025

Harbilash (since deceased) through LRs and another

...Appellants

Versus

Radhey Shyam

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Ajay Jain, Advocate,
for the appellants.

None for the respondent.

ANIL KSHETARPAL, JUDGE.

1. In this Regular Second Appeal, defendants assail the correctness of finding of fact arrived at by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court.

2. The dispute in the present case is with respect to two small pieces of land identified by letters 'ABCD' and 'EFHG' on the site plan Ex.P4. The plaintiff claims that his mother Smt. Basanti Devi, who in turn inherited the property from her mother Smt. Sundri Devi, was owner. After her death, the plaintiff inherited the property. There were certain 'Parnalas' (source for discharge of rain water) and ventilators existing towards the North of the house marked 'X' for the last 30 years. The property situated towards the North of the disputed piece of land marked by letters 'ABCD' at Ex.P4 was sold to defendant-Harbilash by Smt. Sundri Devi but the piece of land marked by letters 'ABCD' was never sold. Similarly, the property

marked by letters 'EFHG' is a joint property of the parties but the defendants want to encroach upon the same.

3. The defendants while contesting claimed that the plaintiff is neither owner nor in possession of the same as Smt. Sundri Devi had no daughter.

4. The trial court dismissed the suit on the ground that equity is in favour of the defendants. The First Appellate Court reversed the judgment and decree passed by the trial court upon appreciation of evidence.

5. It has been found that the defendants in their building plans sanctioned in the year 1970 and 1977 have clearly shown the existence of Gali (street), ventilators, 'Morris' (discharged of rain water) and the plaintiff's case finds support from the report of Superintendent of Municipal Committee dated 08.08.1977 and another report of the Overseer/Junior Engineer dated 04.08.1977.

6. It may be noted here that with regard to common property marked by 'EFHG', the defendant's counsel in the trial court conceded that the said property was joint. As far as existence of 'Chabutra' (projection), 'marked ABCD' is concerned, it is proved from two building plans sanctioned from the local authorities. As far as construction of projection in the line of 'EF' the court found that such construction was illegal and amounts to encroachment on the joint property.

7. This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paper book.

8. The learned counsel representing the appellants submits that the trial court has correctly dismissed the suit and the First Appellate Court has erred in reversing the same.

9. This court has considered the submissions of the learned counsel representing the appellants.

10. Upon re-appreciation of the evidence, the First Appellate Court has recorded cogent reasons before reversing the judgment of the trial court. The trial court merely concluded on the basis of equity which did not exist in favour of the defendants. As is evident the plaintiff's grand mother was owner of the entire property. She sold some property to the defendants. The defendants were required to prove their rights on the basis of the sale deed. However, they failed to prove that the property EFGH was part of the sale in their favour or they were entitled to construct projection/chabutra in line with property 'EFGH'.

11. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere.

12. Dismissed.

13. All the pending miscellaneous applications, if any, are also stand disposed of.

14th January, 2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/non-speaking	YES/No
Whether reportable	YES/No