

RSA-6065-2018 (O&M)
RSA-2749-2018 (O&M)

1

2025:PHHC:020212



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) RSA-6065-2018 (O&M)

Som Nath

..... Appellant

Versus

Jagdish Lal Chopra

..... Respondent

(ii) RSA-2749-2018 (O&M)

Som Nath

..... Appellant

Versus

Jagdish Lal Chopra

..... Respondent

Date of Decision : 04.02.2025

CORAM : **HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Bhrigu Dutt Sharma, Advocate
for the appellant in both the cases.

VIKRAM AGGARWAL, J (ORAL)

CM-16933-C-2018 in

RSA No.6065 of 2018

Prayer in the present application filed under Section 151 of the Code of Civil Procedure, is for condonation of delay of 38 days in re-filing the accompanying appeal.

Heard.

For the reasons, mentioned in the application which is duly



supported by an affidavit, the same is allowed and the delay of 38 days in re-filing the accompanying appeal is condoned.

RSA No.6065 of 2018 (O&M)

RSA-2749-2018 (O&M)

This judgment shall dispose of the aforesaid two appeals, for, the issue arising in both the appeal is the same. The facts are being derived from RSA No.6065 of 2018.

These are plaintiff's second appeals. The suit for permanent injunction filed by the plaintiff was dismissed and the counter claim filed by the defendant was allowed by the the Court of learned Civil Judge (Junior Division), Jalandhar vide judgment and decree dated 08.05.2017. The plaintiff then filed two appeals, one against the dismissal of the suit and the other against the counter claim having been allowed which were also dismissed by the Court of learned Additional District Judge, Jalandhar vide judgment and decree dated 17.10.2017 leading to the filing of the afore-titled two regular second appeals.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The plaintiff (Som Nath) filed a suit for permanent injunction to restrain the defendant (Jagdish Lal Chopra) from demolishing the wall marked as 'A, B' in the site plan which the plaintiff had constructed to prevent the defendant from using the toilet which was claimed to be in exclusive possession of the plaintiff. A declaration was also sought to the



effect that any interpolation, alteration or addition made in the sale deed dated 08.06.1995 executed by the plaintiff alongwith co-owners was illegal and void.

4. A shopping complex namely Shankar Market was constructed by the plaintiff and his associates at Circular Road, near Mai Hiran Gate, Jalandhar which comprised of more than 15 shops (Site Plan was attached with the plaint). Two shops on the ground floor were purchased by the defendant vide registered sale deed dated 08.06.1995. The dispute was as regards a toilet which was shown as red in the site plan, which as per the plaintiff was for the exclusive use of the plaintiff/owner who had constructed the Shankar Market Shopping Complex and that the same was not for the use of the defendant whereas the claim of the defendant was that the sale deed dated 08.06.1995 duly contained a recital that the defendant would be authorized to use the toilet. The plaintiff constructed a wall preventing the defendant from using the toilet which as per the plaintiff, the defendant was attempting to demolish as a result of which the suit was filed.

5. The suit was opposed by the defendant. In the written statement, certain preliminary objections viz. the suit being time barred, being bad for non-joinder of necessary parties, cause of action etc. were raised. On merits, a specific stand was taken that there was one common toilet for all 15 shops and that a recital as regards the same was also made in the sale deed dated 08.06.1995. It was denied that the toilet had been made only for the exclusive use of the plaintiff and the owners of the market.

6. In the replication, the averments made in the written statement



were denied and those made in the plaint were reiterated. A counter claim was raised seeking a mandatory injunction directing the plaintiff to remove the wall illegally constructed by him. The counter claim was resisted by the plaintiff by filing a reply.

7. From the pleadings of the parties, the following issues were framed by the trial Court:-

1. *Whether plaintiff is entitled to permanent injunction as prayed for ? OPP*
2. *Whether the plaintiff is entitled to the declaration as prayed for ? OPD*
3. *Whether suit of the plaintiff is hopelessly time barred ? OPD*
4. *Whether suit of the plaintiff is bad for non-joinder of necessary parties ? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit ? OPD*
6. *Whether defendant/counter claimant is entitled to the relief of mandatory injunction ? OP Counter Claimant.*
7. *Whether counter claim of the defendant is not maintainable ? OPP*
8. *Whether defendant is estopped for filing the counter claim due to his own act and conduct ? OPP*
9. *Whether no cause of action has arisen in favour of the defendant to file the counter claim ? OPP*
10. *Relief.*

8. The parties led their respective evidence.



9. The trial Court dismissed suit filed by the plaintiff and decreed/allowed the counter claim filed by the defendant. Two appeals filed by the plaintiff against both the decisions were dismissed, leading to the filing of the present regular second appeal.

10. I have heard learned counsel for the appellant.

11. Learned counsel for the appellant submits that both the Courts have gravely erred in dismissing the suit filed by the plaintiff and allowing the counter claim filed by the defendant. He submits that there was a interpolation in the sale deed and that a line had been added as regards the use of the toilet which was originally not there in the sale deed. Learned counsel has referred to the judgments of both the Courts as also the evidence led on the record of the case. Reference has been made to the sale deed Ex.D1 and Ex.P2 which were produced by both sides. It has also been submitted that in both the copies, the recital as regards the use of the toilet is at a different place. He submits that had the recital been made prior to the registration of the sale deed, the same would have been at one place and not at separate places in the sale deed.

12. I have considered the submissions made by learned counsel for the appellant-plaintiff but find the same to be devoid of merit.

13. Admittedly, two copies of sale deeds were prepared. One was retained in the office of the Sub-Registrar and the other was given to the parties. The sale deed Ex.D1 shows that there was a recital in the same that the defendant would have the right to use the toilet constructed at the ground



floor. It appears that the said recital was made afterwards i.e. after the sale deed had been typed but before it was registered. This, I hold because the sale deed which was produced from the office of the Sub-Registrar also contained a similar recital. PW4 Surjit Kaur, Senior Assistant from the office of the Deputy Commissioner, Jalandhar produced the certified copy of the sale deed as Ex.P2 stating that it was the second original of the sale deed. The sale deed Ex.P2 also contained the same recital meaning thereby that in both Ex.P2 and Ex.D1 there was a recital with regard to the right given to the defendant to use the toilet.

14. The argument that the line is at different places in the two sale deeds also does not help the plaintiff because the line may have been added after the sale deeds had been typed but before the same were registered. In any case, once the sale deed produced from the record of the registering authority contained a recital to the effect that the defendant would be authorized to use the toilet, it cannot, by any stretch of imagination be stated that there was some interpolation in the sale deed. It has to be borne in mind that the sale deed was a registered document and, therefore, there would be a presumption of the same being genuine attached to it.

In view of the aforesaid, I do not find any merit in both the appeals and the same are accordingly dismissed.

04.02.2025
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No