

(2018) 08 P&H CK 0243

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No.12652-C-2018 In And -1- REGULAR SECOND
APPEAL NO. No. 4509 Of 2016

Hem Raj and others

APPELLANT

Vs

Ram Niwas

RESPONDENT

Date of Decision : 21-08-2018

Acts Referred:

Citation : (2018) 08 P&H CK 0243

Hon'ble Judges : AMOL RATTAN SINGH, J

Bench : Single Bench

Advocate : Ram Darshan Yadav

Final Decision : Dismissed

Judgement

By this application, the applicants-appellants seek advancement of the date of hearing in the accompanying appeal, which otherwise stands adjourned to 18.01.2019.

The ground for seeking such advancement of hearing is that the execution proceedings are at a head and in fact the warrants of possession have been issued.

For the aforesaid reason, the application is allowed and with no notice having been issued in the accompanying appeal, the date of hearing is advanced to today itself.

RSA No. 4509 of 2016

The appellants have challenged the findings of the learned courts below by which the suit of the respondent-plaintiff seeking a decree of permanent

injunction, as also mandatory injunction, has been allowed by the learned Civil Judge (Junior Division), Kosli, with that judgment and decree upheld by

the first appellate Court, i.e. the Additional District Judge, Rewari.

2. It was the case of the plaintiff that he was the owner in possession of the suit property shown to be marked as AFED on the site map annexed

along with the plaint, and that the appellants-defendants be restrained from raising construction over it and further, that if during the pendency of the

suit, they succeed in making such construction, then the suit property be returned to him in the condition that it originally was, with the defendants to

incur the expenses for such restoration.

3. Notice having been issued and the appellants having duly appeared and filed their written statement, the following issues were framed by the trial

Court:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

2. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5. Whether the plaintiff has not come present before the Court with clean had? OPD

6. Whether the suit is bad for non-joinder of necessary party? OPD

7. Relief.

4. The plaintiff led documentary evidence including certified copies of about 06 mutation entries, photographs, a protest petition, a 'Jamabandi' (record

of rights) for the year 2008-09, the 'Aks Shazra' of the village and a site plan, other than oral evidence.

The appellants-defendants are also seen to have led some documentary evidence in the form of a site plan, other than oral evidence.

5. After appraising the evidence the trial Court came to the conclusion that the land jointly owned by the parties had been partitioned by mutual

consent, with the shares of each individual co-sharer not disputed.

The evidence led by the plaintiff was found to be fully proved by him, with the stand of the appellants-defendants being that they had a private

passage which was earlier being accessed by the plaintiff through a gate that he had opened which was later closed by him but, as per the appellants-

defendants, the plaintiff was again seeking to open that gate.

However, the trial Court found that in fact that was not the grievance of the plaintiff at all, with his suit being one against the defendants raising construction over the disputed area, with no evidence led by them whatsoever to counter that allegation, their entire evidence being based only on the point of the plaintiff opening his gate onto the private passage again.

Certain contradictions in the evidence of the defendants were also pointed out by the trial Court in paragraph 13 of its judgment, eventually leading to the conclusion that they were unable to refute the evidence led by the plaintiff and therefore his suit deserved to be decreed.

Accordingly, the suit was decreed, with that judgment and decree upheld by the learned first appellate Court, essentially on the same reasoning.

6. Before this Court, learned counsel for the appellants submits that the parties to the lis being relatives to each other, there is a chance of a compromise between them and that the appellants are even ready to compensate the respondent- plaintiff monetarily for the construction found to have been raised on the disputed area.

He therefore prays that notice be issued to the respondent to enable him to come a settlement.

7. However, nothing having been pointed out at all on the merits of the case that the findings of the courts below are perverse in any manner, there is obviously no question of law to be gone into in this 2nd appeal, on the basis of which notice should be issued.

As regards the contention that the appellants are willing to settle the dispute with the respondent-plaintiff by way of monetary compensation for the construction raised, obviously such settlement could have been reached even outside Court or even in execution proceedings, and simply on account of that offer made, I see no reason to issue notice and direct the respondent-plaintiff to come to Court for the 3rd time.

8. Consequently, with the parties obviously at liberty at any time to settle the dispute amongst themselves, which need not actually be commented upon by this Court, I see no reason to interfere in the concurrent findings of fact by both the learned Courts below.

Therefore, this appeal is accordingly dismissed in limine.