

(1988) 02 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1363 of 1978

Karam Singh

APPELLANT

Vs

Gurdev Singh

RESPONDENT

Date of Decision : 10-02-1988

Acts Referred:

Citation : (1988) PLJ 495 : (1988) 2 RRR 541

Hon'ble Judges : M.S.Liberhan, J

Advocate : O.P. Sharma, Advocate., Advocates for appearing Parties

Judgement

M. S. Liberhan, J.

1. The brief facts giving rise to this Regular Second Appeal are that the plaintiff sought a mandatory injunction directing the defendant to close the three openings namely, A, B and C in the Eastern wall of his Haveli. Further relief sought was to the effect that the defendant be directed to restore the wall of his Haveli to its original position and that he be also restrained from opening any window and door etcetera in the wall in dispute in future too. The plaintiff further averred that the parties had entered into a compromise dated 12.10.1971 wherein the defendant had agreed not to open any window or door in the said wall. The defendant also filed a suit for mandatory injunction against the plaintiff which was dismissed. It is also averred by the plaintiff that now the defendant is backing out of the said compromise and that these acts of the defendant were not permitting the plaintiff to enjoy his (plaintiff's) property.

2. The said allegations were controverted by the defendant. It was alleged by the defendant that on the Eastern side of his Haveli is located a regular Gali and not the property of the plaintiff. There were three windows and one door opening into the Gali. The defendant claimed to be enjoying the rights of air and light through these openings. But he denied the execution of any compromise and challenged its admissibility. The trial Court, after reappraising the evidence, came to the conclusion that the site in dispute was not a private property of the plaintiff and the house of the plaintiff did not adjoin the property of the

defendant on the Eastern side. It was further found that the parties did execute the compromise dated 12.10.1971. However, the said document was found to be inadmissible in evidence. The trial Court further held that the terms and conditions of the said compromise were not binding on the parties and that the dismissal of the earlier suit filed by the defendant is of no consequence as the same was dismissed as withdrawn with permission of the Court to file a fresh one on the same cause of action. It was also observed that the defendant had a right to open the doors in the wall in dispute and the plaintiffs was not entitled to any injunction as prayed for. Resultantly, the plaintiff's suit was dismissed.

3. The plaintiff challenged the finding of the trial Court in appeal and the appellate Court after confirming the findings aforesaid, dismissed the appeal.

4. The only contention raised before me is that the appellate Court has erroneously disallowed the application for permission to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. It is not disputed that the order sought to be brought on the record by way of additional evidence, came into existence during the pendency of the appeal and that this is a material document to determine the controversy between the parties inasmuch as it has been found by the trial Court that the site in dispute is not the sole ownership of the plaintiff and the openings of other right holders also open towards the site in dispute.

5. The learned counsel for the respondent supported the decision of the appellate Court declining the production of additional evidence solely on the ground that the order was sought to be brought on the record at a very belated stage and that this amounts to filing up of a lacuna in the case of the plaintiff. But I find no force in the submission of the learned counsel for the respondent in view of the admitted fact that the order sought to be brought on record by way of additional evidence came into existence during the pendency of the appeal. Apart from this the defendant can be well compensated with costs for production of the said order by the plaintiff as the document sought to be produced in evidence is a relevant piece of evidence which requires consideration in view of the other evidence led by the parties.

6. In view of the above observations, the appellant is permitted to produce additional evidence sought to be led vide his application under Order 41 Rule 27 of the Code of Civil Procedure, of course, on payment of Rs. 200/ as cost. The judgment and decree of learned appellate Court are set aside. The case is remanded back to the lower appellate Court with the direction that after allowing the plaintiff to lead additional evidence and thereafter granting an opportunity to the defendant of leading evidence in rebuttal, if any, the appeal be decided on merits afresh. The appeal is accepted accordingly. The parties through their counsel are directed to appear before the appellate Court on 14.3.1988.