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Court : Himachal Pradesh

Decided On : Oct-05-2012

Judge : Rajiv Sharma

Appeal No. : R.S.A.No. 475 of 2010

Appellant : Hans Raj

Respondent : Sharwan Kumar and Another

Judgement :

Rajiv Sharma, J.

This Regular Second Appeal is directed against the judgment and decree dated 18.9.2010 rendered by the learned District Judge, Kangra at Dharamshala in Civil Appeal No. 17-G/XIII/2009 and cross-objections No. 39-G/XIII/2009.

2. Material facts necessary for the adjudication of this Regular Second Appeal are that respondent-plaintiff (hereinafter referred to as the plaintiff for convenience sake) filed a suit for permanent prohibitory and mandatory injunction against the appellant-defendant Hans Raj and Babu Ram in the court of Civil Judge (Junior Division), Court No.II, Dehra. According to the plaintiff, suit land comprising Khata No. 237, Khatauni No. 352, Khasra Nos. 1251 and 1264, kita 2, area 0-32-30 hectares, as per Jamabandi for the year 2001-2002 of Muhal Kado, Mauza Gangot, Tehsil Dehra, District Kangra, H.P. was recorded in the joint ownership and possession of the parties. Defendants are bent upon to occupy the suit land

without the consent of plaintiff. They have engaged about ten persons for digging the suit land and are threatening to lay foundation and to raise construction on the suit land. Defendants were requested not to do so but to no avail. According to the plaintiff, his house would become unsafe in case the foundation of his house is disturbed. It is in these circumstances, the plaintiff has filed the suit for permanent prohibitory and mandatory injunction against the defendants.

3. Suit was contested by appellant-defendant No.1 Hans Raj. According to him, he has 1/3rd share in the suit land and the parties are having separate possession by way of mutual understanding since the time of their father. He was raising a toilet adjoining to his house and the same was not causing any loss or harm to the house of the plaintiff. The construction was completed in all respect before 4.11.2006.

4. Replication was filed by the plaintiff. Issues were framed by the Civil Judge (Junior Division) on 8.8.2007. Learned trial court partially decreed the suit of the plaintiff. Defendant Hans Raj was directed to fill up the septic tank shown by the letters ABCD in the site plan Ex.PW-1/A by way of mandatory injunction. However, defendant Hans Raj was permitted to construct septic tank of the same dimension as shown in Ex.PW-1/A after leaving at least 15 feet space behind the house of the plaintiff. The site plan was ordered to be part and parcel of the decree sheet. Defendant Hans Raj feeling aggrieved by the judgment and decree dated 5.2.2009 preferred an appeal before the learned District Judge, Kangra. Plaintiff also filed cross-objections against the judgment and decree dated 5.2.2009 assailing the findings given by the trial court on issue No.1. Learned first Appellate Court affirmed the findings given by the trial court on issues No.2 to 6. The first Appellate Court has accepted the cross-objections and issue No.1 was also decided in favour of the plaintiff. Hence, this Regular Second Appeal. It was admitted on the following substantial questions of law:

1. Whether it was incumbent upon the first appellate court below to have given decision on each and every issue which arose for consideration before the learned court? Was it not a statutory requirement for giving reason for each issue which arose for consideration before this Honble Court?

2. Whether the learned first appellate court erred in not appreciating the provisions of law applicable, pleadings of the parties and evidence which have been adduced by them as a result of that vitiating the judgments and decrees?

5. Mr. Kul Bhushan Khajuria has strenuously argued that both the courts below have not appreciated the oral as well as documentary evidence led by the parties. According to him, the findings on all the issues have not been returned by the trial court.

6. Mr. Rajnish K. Lall has supported the judgments and decrees of the Courts below.

7. I have heard the learned counsel for the parties and have perused the records and pleadings carefully.

8. Since both the substantial questions of law are interconnected and interlinked they are taken up together for determination to avoid repetition of discussions of evidence.

9. PW-1 Pardeep Mehra, Civil Engineer has testified that he has prepared site plan Ex.PW-1/A. It was prepared at the instance of plaintiff Sharwan Kumar. According to him, septic tank was about 4 feet away from the house of plaintiff. According to him, cracks developed in the retaining wall and wall of the house of the plaintiff.

10. Plaintiff has appeared as PW-2. He has tendered his evidence by way of affidavit Ex.PW-2/A. According to the contents of affidavit, the parties are owners of the suit property. The same was not partitioned. Defendants have raised construction over the suit land without the consent of the plaintiff. They have engaged ten persons for construction. Defendants have dug foundations adjoining to the house of plaintiff. He has requested the defendants not to raise construction but they did not stop. Defendants have completed the construction work during the pendency of the suit and raised septic tank adjoining to the residential house of plaintiff shown in the site plan by letters ABCD due to which corridor, retaining wall and wall of the house of plaintiff have developed cracks.

11. PW-3 Bachitter Singh has corroborated the statement of PW-2 Sharwan Kumar. He has also led his evidence by way of affidavit Ex.PW-3/A. According to the contents of affidavit, defendant has raised septic tank adjoining to the house of plaintiff in the month of November, 2006. Cracks have developed in the retaining wall and wall of the house of plaintiff after the construction of the septic tank. There were no cracks in the corridor, retaining wall and wall of the house of plaintiff before the construction of septic tank.

12. PW-4 Raj Kumar has also led his evidence by way of affidavit Ex.PW-4/A. According to him, defendant has constructed septic tank adjoining to the house of plaintiff in the month of November, 2006 after the institution of the suit. Cracks have developed in the retaining wall and wall of the house of plaintiff after the construction of septic tank. There were no cracks before the construction of septic tank.

13. Defendant Hans Raj has appeared as DW-1. He has tendered his evidence by way of affidavit Ex.DW- 1/A. According to the averments contained in the affidavit, no damage was caused to the house of the plaintiff due to construction of the septic tank. It is further stated in the affidavit that the plaintiff himself has constructed septic tank and toilet inside his own house. According to him, septic tank is at a distance of 8-10 feet from the residential house of plaintiff. He has admitted that suit land is joint inter se the parties. He has also admitted that he is mason by profession. He has also admitted that he was stopped by the plaintiff when construction work of septic tank was started. He has further admitted that when he did not stop the construction work, plaintiff approached the Pradhan. Pradhan had told to shift the tank to a distance of two feet. He has also admitted that he did not stop the construction work and continued with the construction of septic tank.

14. DW-2 Babu Ram has tendered his evidence by way of affidavit Ex.DW-2/A. According to him, no damage has been caused to the house of plaintiff after the construction of septic tank. According to him, toilet of defendant was situated at a distance of 8-10 feet from the house of plaintiff. He has also admitted that the house of the plaintiff was constructed about 14 years ago while two rooms of the

back side of the house of plaintiff were constructed about two years later. He has also admitted that there were cracks in those two rooms.

15. What emerges from the oral as well as documentary evidence led by the parties is that due to construction of septic tank by the defendants, cracks have developed in the house of plaintiff. PW-1 Pardeep Mehra, Civil Engineer has visited the spot and prepared the site plan Ex.PW-1/A. PW-2 Sharwan Kumar and PW-3 Bachitter Singh have categorically stated that after the construction of the septic tank, cracks have developed in the house of the plaintiff. Plaintiff told the defendants not to raise construction. Defendant No.1 has admitted that he was told by the plaintiff not to raise construction. Pradhan of the Gram Panchayat also asked the defendant to stop the construction. Pradhan had told the defendants to shift the tank to a distance of two feet. It is also admitted case of the parties that the suit land was not partitioned till date. Plaintiff has constructed his house about 14 years back and he has added two rooms later on. Defendant No.1 in his cross-examination has admitted that there was sufficient land vacant between the house of the plaintiff and defendants. Defendants ought not to have constructed the septic tank in the vicinity of the plaintiffs house.

16. So far as issue No.1 is concerned, there was always apprehension in the mind of the plaintiff that defendant No.1 would raise the construction, even though the property has not been partitioned. Learned first appellate court has rightly held that in order to avoid multiplicity of litigation, plaintiff was entitled to relief of prohibitory injunction.

17. Learned trial court has given findings on all issues framed by it on 8.8.2007. Both the courts below have correctly appreciated the oral as well as documentary evidence. Learned first appellate court has rightly affirmed the findings recorded by the trial court on issues No. 2 to 6.

18. In view of observations and discussions made hereinabove, there is no substantial question of law much less to say substantial question of law in the Regular Second Appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.