



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4736-4737 OF 2011

ANIL KUMAR MODI & ORS.

Appellant(s)

VERSUS

TARSEM KUMAR GUPTA

Respondent(s)

JUDGMENT

B.R. GAVAI, J.

1. These appeals challenge the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 26.08.2009 affirming the order passed by the Additional District Judge, Sangrur dated 28.10.2006 whereby the Additional District Judge had allowed the appeal of the respondent-plaintiff and decreed the suit.

2. This is a third round of litigation between the parties.

3. In the first round, the respondent-plaintiff had filed a suit for injunction against the Municipal Committee as well as the present appellants-defendants for removing the latrine blocks in the 10 feet passage between the houses of the two parties. The said suit was dismissed holding that, though the respondent-plaintiff had a right to the said passage in view of sale deed dated 11.10.1954, he had no right to construct the toilet and was directed to remove the latrine as there also exists an easementary right of the present appellants-defendants to open the windows and ventilators in the said passage. In an appeal carried against the same by the respondent-plaintiff, the First Appellate Court held that the respondent-plaintiff did not have exclusive right for the said passage. It affirmed the order passed by the trial Judge. Further, the Second Appeal carried by the respondent-plaintiff was also dismissed.

4. In the second round, the respondent-plaintiff filed a suit against the appellants-defendants as they were attempting to raise a construction and open a door in the disputed passage.

5. During the pendency of the second suit, the third suit, i.e., the present suit came to be filed on 01.06.2000 seeking an order of injunction restraining the present appellants-defendants from removing the bricks raised by the respondent at points A, B, C, D in the site plan. The appellants-defendants also filed a counter claim praying for decree for removal of the bricks from that passage.

6. During the pendency of the third suit, in view of the statement made by the appellants-defendants that, they will not open the door/gate and they will only open windows in the common passage, the respondent-plaintiff withdrew the second suit.

7. The Trial Court vide order dated 30.10.2004 dismissed the third suit and decreed the counter claim of the appellants-defendants. Appeals were filed by the respondent-plaintiff against the said

decree.

8. The First Appellate Court reversed the judgment and order of the Trial Court and decreed the suit of the respondent-plaintiff and dismissed the counter claim.

9. In the Second Appeals preferred by the present appellants-defendants, the High Court affirmed the order of the First Appellate Court and dismissed the said Second Appeals. Being aggrieved thereby, the present appeals are filed.

10. Shri Ankit Goel, learned counsel appearing on behalf of the appellants-defendants submits that the First Appellate Court as well as High Court have grossly erred in interfering with the judgment and decree passed by the Trial Court. He submits that, in the first round, there was a clear finding of the First Appellate Court that the passage was a common passage.

11. He further submitted that the said finding was affirmed by the High Court in the Second Appeal and

as such, it operates as *res judicata*. It is also submitted that in view of the said finding it was not correct for the First Appellate Court and the High Court to have taken a view contrary to the finding of the Appellate Court in the first round. He relies on the judgments of this Court in the cases of *R. Unnikrishnan & Anr. Vs. V.K. Mahanudevan and Ors.*¹ and *K. Arumuga Velaiah Vs. P.R. Ramasamy & Anr.*² in that regard.

12. Shri Gagan Gupta, learned counsel appearing for the respondent-plaintiff, on the contrary, submits that the First Appellate Court as well as the High Court on the perusal of the sale deed had rightly come to a conclusion that the respondent-plaintiff was entitled to exclusive possession of the said passage and the only right that was available to the present appellants-defendants was of opening windows and ventilators in the said passage. He, therefore, submits that no interference is warranted in the present appeals.

¹ (2014) 4 SCC 434

² (2022) 3 SCC 757

13. We have perused all the judgments in the first round as well as the third round.

14. In the first round, the only question that fell for consideration before the High Court was as to whether the respondent-plaintiff was entitled to construct the latrine in the passage. The finding of the Trial Court was that, though the respondent-plaintiff was entitled to possession thereof, he could not construct latrine in as much as it adversely affected the easement rights of the appellants-defendants.

15. The Appellate Court, therefore, in the first round, ought to have restricted its findings to the said issue. The question as to whether the appellants-defendants were also entitled to any right in the said passage did not fall for consideration in the said proceedings. In that view of the matter, there was no occasion for the Appellate Court in the first round to have made any observation with regard thereto.

16. In the present suit, the question as to whether

the respondent-plaintiff was entitled to exclusive possession of the said passage fell for consideration. The Trial Court dismissed the suit. The First Appellate Court, on the basis of the interpretation of the sale deed, came to a finding that the respondent-plaintiff was entitled to exclusive possession of the said passage and the right of the appellants-defendants was limited only to opening of windows and ventilators in the said passage. The High Court in Second Appeals has affirmed the said findings of the First Appellate Court.

17. Though, Mr. Ankit Goel, learned counsel, strenuously argued, relying on certain judgments of this Court, that the findings in an earlier proceeding could operate as *res judicata* in subsequent proceedings, in our view, the said judgments would not be applicable in the facts of the present case.

18. The issue in the first suit was limited only as to whether the respondent-plaintiff has a right

to construct the latrine in the passage. The issue as to whether the respondent-plaintiff was exclusively entitled to possession thereof did not fall for consideration in the earlier round, whereas in the third round, the said issue directly fell for consideration.

19. In that view of the matter, we do not find any reason to interfere with the concurrent orders of the First Appellate Court and the High Court.

20. The appeals are dismissed in the above terms. Pending applications, if any, stand disposed of. No order as to costs.

.....J
(B.R. GAVAI)

.....J
(C.T. RAVIKUMAR)

New Delhi
September 14, 2022