

CR No. 4848 of 2012 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4848 of 2012 (O/M)
Date of decision : 18.12.2015

Suresh

..... Revisionist

Versus

Priyanka Goel and Jyoti Garg

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.K. Garg Narwana, Senior Advocate, with,
Mr. Deepak Hooda, Advocate, for the revisionist.

Mr. Anupam Gupta, Senior Advocate, with,
Mr. Ashok Kumar, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH, J.

Impugned in the present revision is the order dated 17.5.2012, passed by the learned Additional District Judge, Gurgaon, affirming the order dated 17.1.2012, passed by the learned Additional Civil Judge (Senior Division), Gurgaon, vide which the application of the plaintiffs (respondents herein), filed under

CR No. 4848 of 2012 (O/M)

-2-

Order 39 Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908, was allowed and the defendant (present revisionist) was restrained from demolishing the passage in question in any manner till the decision of the case.

The facts of the case, which are required to be noticed for the purpose of disposal of the present revision, are that the plaintiffs/respondents claim that they are co-owner in possession of the land bearing Khewat/Khata No. 1/68 Min, Rect. No. 42, Kila No. 11 (8-0), total measuring 8 kanals to the extent of 130/160th share i.e. 6 kanals 10 marlas and Rect. No. 42, Kila No. 20/1(4-0) to the extent of 30/80th share i.e. 1 kanal 10 marlas. The total land from both the kilas comes to 8 kanals, situated within the revenue estate of village Sanp Ki Nangli, Tehsil Sohna, District Gurgaon. The land was purchased by the plaintiffs/respondents, vide sale deed dated 13.7.2011. The land was developed by Ansal House and Construction Limited and marked as Orchard No. B-02 under the Golden Orchard Scheme. They sold the said farm to Ashok Kumar and others, vide sale deed bearing Vasika No. 2523 dated 11.9.2007 and handed over the possession to them. Ashok Kumar etc. further sold the said farm to the plaintiffs/respondents by way of sale deed dated 13.7.2011. The mutation was accordingly sanctioned. It was further averred that a passage was allotted for ingress and egress

CR No. 4848 of 2012 (O/M)

-3-

to the farm towards Eastern side, which is connected to the main road. The plaintiffs/respondents have been using the said passage, which is a pucca passage of tarcol road. The defendant/revisionist wanted to demolish the said passage and called the JCB machine, necessitating the filing of the suit.

The defendant/revisionist, on the other hand, claimed that he is co-owner in possession of land bearing Rect. No. 42, Kila No. 12(8-0), 19(8-0), 21(5-9), 22(3-15), total measuring 25 kanals 4 marlas to the extent of 2/3rd share. His father Shri Ram Rikh is owner in possession to the extent of 1/3rd share, vide mutation bearing No. 845 dated 4.1.2012. The plaintiffs/respondents have no concern with the land of defendant/revisionist and his father. Kila Nos. 12 and 19 of the defendant/revisionist falls towards the Eastern side of the land bearing Kila Nos. 11 and 20, the part of which is stated to be owned and possessed by the plaintiffs/respondents. There is no passage at the spot. The land in question is an agricultural land. As per the provisions of Punjab Scheduled Roads and Controlled Areas (Restrictions of Unregulated Development) Act, 1963, no person shall erect or re-erect any building or make or extend any excavation or layout, any means or access to a road in a controlled area without the prior permission of Director, Town and Country Planning. Even as per the *Aks-Shajra*, there is no passage

CR No. 4848 of 2012 (O/M)

-4-

on the Eastern side of Kila No. 11 and 20. The main road is existing at a distance of 1 ½ kilometers from the said land.

I have heard the learned senior counsel for the defendant/revisionist, the learned senior counsel for the plaintiffs/respondents and have also carefully gone through the file.

The lower Court, while allowing the application filed by the plaintiffs/respondents under Order 39 Rules 1 and 2 read with Section 151 CPC, placed heavy reliance upon the judgment and decree dated 29.10.2009, titled as Ansal Housing Versus Lakhi and others, passed in Civil Suit No. 441 of 2000/2004, decided by the learned Civil Judge (Junior Division), Gurgaon, between predecessor-in-interest of the parties. The plaintiffs/respondents had purchased the suit land from one Ashok Kumar, who had further purchased it from Ansal Housing and Construction Limited. It was observed by the lower Court that in the said suit titled as Ansal Housing Versus Lakhi and others, the controversy regarding road in question has been set at rest and the predecessor-in-interest of the plaintiffs/respondents have been given the right to use the same. Therefore, there is no ground to re-open the said finding. The first appellate Court, while dealing with the said matter and dismissing the application, made the following observations :-

“8. After hearing the parties at length, this Court is of the view that learned trial Court has committed no illegality or irregularity by

endorsing the judgment and decree dated 29.10.2009, which has not been set-aside till date by any court of competent jurisdiction. The assertion made on behalf of appellant/defendant that judgment and decree dated 29.10.2009 is vague, cannot be settled at this stage. Hence, there is no merits in the appeal in hand and same is liable to be dismissed. Ordered, accordingly. There is however, no order as to costs.

9. Before parting with the matter, this Court would like to highlight that learned trial Court has restrained the defendant from demolishing the rasta in question in any manner till decision of the case. There is, however, no local inspection report or demarcation report of the spot on the file or the photographs of the same. Hence, it would be in the larger interest of justice that both the parties be directed to place on record the latest five photographs of the spot from the angle which projects the disputed land in the best way from their respective angle making clear the identity of spot from its surrounding features. The parties are at liberty to get the disputed land demarcated, and if they so desire, then learned trial Court will pass the appropriate order.”

It is not a denying fact that the land of both the parties adjoins each other.

Now, the disputed question will arise as to whether there is a passage towards the Eastern side of Kila Nos. 11 and 20, belonging to the plaintiffs/respondents, which is towards the Western side of Kila Nos. 12 and 19, owned by the defendant/revisionist ?

In the *Aks-Shajra*, no such passage is shown. However, there is a passage towards Southern side of Kila Nos. 20 and 19, belonging to the plaintiffs/respondents and defendant/revisionist respectively.

CR No. 4848 of 2012 (O/M)

-6-

The learned senior counsel for plaintiffs/respondents has taken this Court through the pleadings in the previous suit as well as the judgment and decree of the lower Court. The plaint of the previous suit titled as Ansal Housing and Construction Limited Versus Lakhi and Rajesh Jain, shows that in the said suit, Ansal Housing and Construction Limited had claimed that they are in possession of the land bearing Rect. No. 42 Kila No. 12(8-0), 19(8-0), 21(5-9), 22(3-15), total measuring 25 kanals 4 marlas, to the extent of 1/6th share, which comes to 4 kanals 4 marlas, on the basis of agreement of sale entered into between the plaintiff i.e. Ansal Housing and Construction Limited (hereinafter referred to as 'the Company') and defendant No. 1 in said suit, namely, Lakhi. The said Lakhi, had entered into agreement claiming that he had acquired occupancy rights in the suit land and had further claimed that he filed a suit for declaration, which is likely to be decided shortly. The agreement was executed on 23.7.1997. The plaintiff/Company had also claimed that it is in exclusive possession of site 'ABCD', upon which it had constructed a 12 feet wide pucca road. It is also claimed that it had developed two schemes under the name and style of 'Golden Orchards' and 'Golden Heights' and the access to the said two farm houses is through the said passage/road. Accordingly, it was prayed that the declaration may be granted to the

CR No. 4848 of 2012 (O/M)

effect that Surrender Deed dated 4.10.1999, got registered by defendant No. 2 in favour of defendant No. 1 (in said suit) alongwith mutation and other revenue entries in favour of defendant No. 2 are void ab-initio. The permanent injunction was also sought for restraining the defendants from taking forcible possession or dispossessing the plaintiff/Company, interfering in any manner in the peaceful use and enjoyment of the suit land measuring 4 kanals 4 marlas and from causing any sort of damage or blocking in any manner the road existing thereupon, shown in letters 'ABCD', attached with the suit.

In the said suit, Rajesh Jain (defendant No. 2), who is stated to be predecessor-in-interest of defendant No. 1, had taken the plea that the plaintiff/Company is not in possession of 1/6th share of the suit land. It was admitted that the plaintiff/Company has illegally and forcibly constructed the road about 12 feet wide without the notice and knowledge of the defendants and at the back of the defendants. Ultimately, the lower Court, vide judgment and decree dated 29.10.2009, partly decreed the suit of the plaintiff by restraining the defendants from dispossessing or interfering in the possession of the plaintiff/Company over the suit land, measuring 4 kanals 4 marlas, except in due course of law. The other relief regarding agreement seeking declaration of Surrender Deed dated

CR No. 4848 of 2012 (O/M)

-8-

4.10.1999, was declined.

The perusal of the judgment and decree dated 29.10.2009, passed by the learned Civil Judge (Junior Division), Gurgaon, shows that no discussion was made that the plaintiff/Company has constructed a road 'ABCD' on the said site nor it was discussed that while delivering the possession of 1/6th share of the land measuring 25 kanals 4 marlas, the possession of specific portion 'ABCD' was delivered to said Ansal Housing and Construction Limited. The lower Court granted relief only regarding the suit land, which was 1/6th share of land measuring 25 kanals 4 marlas. No findings were recorded regarding passage 'ABCD' nor any injunction was issued against the defendants for restraining them from demolishing the passage 'ABCD'. The injunction was only regarding the suit land measuring 4 kanals 4 marlas, which as per the plaint is 1/6th share of land measuring 25 kanals 4 marlas. Further, there is nothing on file to show that in pursuance to the said agreement, Lakhi ever acquired ownership over the said site or he executed any sale deed in favour of Ansal Housing and Construction Limited. Therefore, the right of said Lakhi to transfer the possession of 1/6th share of land measuring 25 kanals 4 marlas to Ansal Housing and Construction Limited is questionable. Then, it is not shown that the said Lakhi was in exclusive possession of site

CR No. 4848 of 2012 (O/M)

-9-

'ABCD', claimed in the said plaint. Now, both the Courts below erred in concluding as if a decree was passed in the said case regarding passage 'ABCD'. The defendants had claimed in the said case that the plaintiff/Company had forcibly made a road on the site 'ABCD'. It is established law that relief, which is not specifically granted, is deemed to have been declined. Therefore, the relief qua passage 'ABCD' is deemed to have been declined in the previous suit.

The learned senior counsel for respondents has shown some photographs of the disputed site to this Court. However, from the photographs of the disputed site, it cannot be made out that there is a passage in the land belonging to the defendants and that the plaintiff has lawful right to use the same even without owning it.

Now, coming to the sale deed of the plaintiff relied upon in this suit, admittedly a passage towards Eastern side is mentioned. Further, the predecessor-in-interest of the plaintiff was not the owner of any property towards Eastern side. The property towards the Eastern side bearing Kila Nos. 12 and 19 is owned by the defendant and his father. The plaintiffs/respondents were required to place on file a positive prima-facie evidence that their predecessor-in-interest had lawfully constructed any passage and had right to use it. If with muscle power, the plaintiff in the previous suit, had constructed some passage forcibly, it does not get right to

CR No. 4848 of 2012 (O/M)

-10-

use the same and transfer the alleged rights in the said passage to anybody. The plaintiff will step into the shoes of their predecessor and will get only those rights, which were owned and used by its predecessor. In the revenue record, no passage is shown towards Eastern side of the farm house of the plaintiff, nor it is proved that that plaintiff or their predecessor had ever purchased the specific portion 'ABCD' or had the legal rights to use the same. The relief of injunction is equitable relief and only a person coming to the Court with clean hands is entitled to the same. Such discretion is not available for a person, who commits mischief and then claim protection of law. Both the Courts below have mis-interpreted the previous judgment and decree dated 29.10.2009 titled as Ansal Housing and Construction Limited Versus Lakhi etc.

It being so, this Court is of the considered view that no prima-facie case is made out in favour of the plaintiffs/respondents. Infact, the first appellate Court was itself not sure whether the existence of passage and the lawful right of the plaintiff to use the same, is proved or not. The plaintiffs/respondents have not purchased any right of ownership in the adjoining land towards the Eastern side from its original owner. Consequently, the impugned order dated 17.5.2012, passed by the learned Additional District Judge, Gurgaon and the order dated 17.1.2012, passed by the

CR No. 4848 of 2012 (O/M)

-11-

learned Additional Civil Judge (Senior Division), Gurgaon, are hereby set aside and the application filed by the plaintiffs under Order 39 Rules 1 and 2 read with Section 151 CPC, stands dismissed.

Accordingly, the present revision is allowed.

(KULDIP SINGH)
JUDGE

18.12.2015
sjks