

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.374 of 1991 (O&M)
Date of Decision: 17.03.2015

Sat Parkash (since deceased) through LRs and another

..... APPELLANTS

VERSUS

The Municipal Committee, Ferozepur, Jhirka and others

..... RESPONDENTS

PRESENT: - Mr. Adarsh Jain, Advocate
for the appellants.

None for the respondents.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the local papers may
be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in
the Digest?

SHEKHER DHAWAN, J.

This Regular Second Appeal is directed
against judgment and decree dated 17.11.1990
passed by the Court of Additional District Judge, Gurgaon
whereby appeal against the judgment and decree dated

19.05.1988 passed by Senior Sub Judge, Gurgaon was dismissed.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiffs Sat Parkash and others filed suit for permanent injunction seeking restrain order against defendants from raising any constructions on the public street as shown by letters ABFEG with red colour in site plan Ex.PW5/2. The relief of mandatory injunction was also sought for demolition of the constructions, if any raised by the defendants during the pendency of the suit.

It is the case of the plaintiffs that they are owners of residential building adjoining the public street towards the North. The main gate of the plaintiffs' house opens towards the North on the pucca roads leading from East to West and also on road leading from South to North. The plaintiffs had been using the public street for ingress and out-gress purposes and the same is situated in ward No.10 of Municipal Committee, Ferozepur Jhirka. However,

defendant No.2 Smt. Prem Lata purchased a plot towards the north of plaintiffs' building from three persons, namely, Kishan Lal and others and incorrect boundaries and measurements were shown in the sale deed dated 19.12.1977 with an intention to grab the entire public street. On the basis of said sale deed, defendant No.2 applied to the Municipal Committee (defendant No.1) for sanction of the plan of the proposed constructions. The said plan was rejected by the Municipal Committee on the ground that the same included the public street, its roads and drains. The matter went in an appeal before Deputy Commissioner, Gurgaon and the said appeal was rejected. Thereafter, defendant No.2 again submitted the site plan for sanction with slight modifications and got the same sanctioned in collusion with officials of Municipal Committee. The order was passed by SDO(C) Ferozepur Jhirka exercising the delegated power of Deputy Commissioner and restrained the defendants from proceeding with the proposed construction.

Defendant No.2, at the instance of defendant No.1 filed Civil Suit for injunction. At that stage, defendant No.1 admitted the suit of defendant No.2 in order to enable defendant No.2 to get a collusive decree in her favour.

It is the case of the plaintiffs that defendant No.1

colluded with defendant No.2 and request made by the plaintiffs was of no use.

Defendant No.1 contested the suit by taking plea in the written statement that site plan submitted by defendant No.2 was rejected earlier as the same had shown some more area in constructions than the area purchased by her through the sale deed. Defendant No.2 had shown the sale deed to the Municipal Committee in her favour and revised site plan was sanctioned after making due inquiry on the spot. There is no public street towards the south of the plot of defendant No.2 and there was no collusion between defendants No.1 and 2. More so, application moved by the plaintiffs for impleading them as a party in the suit filed by defendant No.2 was dismissed by SDO (Civil) after conducting the inquiry.

Defendant No.2 Smt. Prem Lata in her written statement maintained that there was no public street on the North of the plaintiffs' house and on the West there is no municipal passage. So the plaintiffs have no locus standi to file the suit. The plaintiffs are not the owners of the building shown by letters ABCD as they purchased only a portion of the same. Their houses never abutted any public street. The main gate of the plaintiffs' house does not open towards North of any pucca road nor they have been enjoying the

benefit of public street. The site marked by letters ABEFG is not a public street. In fact, she had purchased plot measuring 52x25 feet on the basis of sale deed dated 19.12.1977 from its owner. The said plot was never a part of the public street. The site plan submitted by her with the Municipal committee was not rejected on the ground that the site in dispute was a public street. In fact defendant No.2 claimed sanction to a width of 27 feet. The Municipal khasra number of the plot of defendant No.2 is 456 and number of remaining land towards West and South is 457 and 458 belonging to the answering defendant. Defendant No.2 had already raised construction upto plinth level to the height of 2/2½ feet prior to the institution of the suit and the proposed construction is not going to cause any obstruction to the plaintiffs and prayed that the suit be dismissed.

Learned trial Court settled the following issues and additional issue on 13.05.1980 and the parties were put to trial:

1. Whether ABEFG is a public street as alleged by the plaintiffs? OPP
2. Relief.

Additional issue:

1. Whether the defendant committed disobedience against the order of this Court, if so to what effect? OPP

Learned trial Court after considering the material and evidence available on file decided issue No.1 against the plaintiffs. Additional issue was also decided against the plaintiffs and consequently, the suit of the plaintiffs was dismissed.

Being aggrieved of passing of said judgment and decree, the plaintiffs/appellants challenged the same by way of first appeal and remained unsuccessful. Hence, the present Regular Second Appeal before this Court.

At the time of arguments, Mr. Adarsh Jain, learned counsel for the appellants took the plea that the learned Courts below have fell in error while concluding that the disputed site shown by letters ABFEG in site plan Ex.PW5/2 is not a part of public street whereas in fact the same is a part of public street. Learned Court below fell in error while ignoring the sale deed Ex.PW6/1 wherein the boundaries of 'Haveli' purchased by the plaintiffs from Vidya Bhushan and others, wherein it was mentioned clearly that there is a Chabutra of 'Haveli' and then there is thoroughfare on its Northern side. Even the reports

prepared by the officials of Municipal Committee vide Ex.PW4/6 to Ex.PW4/8 have been ignored wherein there is drain and roads on the southern side of the plot.

As per learned counsel for the appellants, learned Courts below ignored the fact that earlier site plan submitted by Smt. Prem Lata was rejected by the Municipal Committee and subsequently the same site plan was got sanctioned and that was in collusion with officials of Municipal Committee. The report of Administrator of Municipal Committee as DW-1 was also ignored. The said findings recorded by learned Courts below are not based on facts of the case and evidence available on file and same are liable to be reversed and appeal of the appellants be accepted and judgment of the Courts below be set aside.

Respondent No.3 was earlier represented by Mr. J.L. Malhotra, Advocate for the respondent. But thereafter none put his appearance for the respondents and this Court considered the matter in its entirety on the basis of record available.

The first point involved in this case is that appellants remained unsuccessful before both the Courts below. The findings recorded by learned Courts below are findings of facts and the present Regular Second Appeal is not maintainable because no substantial question of law is

involved in this case. Both the Courts below have recorded findings of fact that the land shown as ABEFG in site plan Ex.PW5/2 is not a public street. The said findings recorded by both the Courts below cannot be looked into in the Regular Second Appeal. Such a law was laid down in **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs.**, 2001(2) JT 407.

However, in the case in hand, learned Courts below have already discussed the evidence to meet the grounds of appeal taken by appellants before this Court. Learned Court of First Instance had rightly come to the conclusion that there is no evidence at all that disputed site has ever been declared as a public street by the Municipal Committee under Section 180 of Haryana Municipal Act. There is absolutely no evidence that the said site was ever maintained out of Municipal or public funds at any point of time. Hence, the findings could not be returned that the same is a public street as claimed by the plaintiffs-appellants.

The appellants' main contention is that there is a recital in sale deed Ex.PW6/1 that the 'Haveli' sold through sale deed is surrounded on the Northern side by a Chabutra and Rasta-am. The Courts below rightly observed and recorded finding that the same does not bind defendant

No.2 as she was not the party to the deed. As regards to rejection of site plan submitted by defendant No.2 with defendant No.1 at the initial stage and acceptance of the site plan by the Municipal Committee at a later stage, the defendant had come with a specific plea that in the earlier site plan submitted by defendant No.2 the width was shown as 27 feet whereas she was given 25 feet width in the sale deed. The same is evident from copy of judgment Ex.P-9 i.e. appeal decided by Deputy Commissioner, Gurgaon and the sanctioned order is Ex.D4.

Learned Court of first instance had also rightly observed that the width of the passage is not equal and Northern wall of the plaintiffs' house is not parallel to the wall of Shivji temple situated on the Western side of the plaintiffs' house and the findings recorded by the Court that the plaintiffs have extended the Northern portion of their house towards the vacant land and thereby reduced the width of open land.

The appellants have also challenged the judgment and decree Ex.P-5 of Civil Court obtained by Prem Lata in her favour whereby she was declared to be owner of the land purchased vide sale deed Ex.DW1/2 but there is no material or substance available on the file to arrive at a conclusion that there was any collusion between defendant

No.2 and official of defendant No.1.

In view of the above, the present Regular Second Appeal is without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

**March 17, 2015
jt**