

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.**

**Regular Second Appeal No.3938 of 2009 (O&M)  
Date of Decision: October 30, 2015.**

Amrit Lal and another

**.....APPELLANT(s).**

**VERSUS**

Sadhu Ram and another

**.....RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Vikas Bahl, Senior Advocate with  
Ms. Shalu Sehgal and Mr. Akshay Rawal, Advocates  
for the appellant (s).

Mr. Sarju Puri, Advocate  
for respondent No.1.

Respondent No.2 proceeded ex parte.

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**SURINDER GUPTA, J.**

This is regular second appeal against the judgements of the Courts below, dismissing the suit filed by the plaintiffs Amrit Lal and Premawati seeking the relief of permanent injunction restraining defendant Sadhu Ram alias Birbal from raising any construction, encroaching upon the suit property and constructing any projection in and over the property shown red in the site plan (Ex.P5) attached with the plaint, marked by letters ABCD being part of *Sabji Mandi Chowk*, Jadla District Nawanshahr.

(In the later part of the judgement, parties will be referred as plaintiffs and defendants as in the civil suit.)

2. The suit was filed by the plaintiffs in representative capacity and the permission was allowed to the plaintiffs Amrit Lal and Smt. Padmawati to file the suit in representative capacity vide order dated 30.05.2002.

3. The case of the plaintiffs, in brief, is that the suit property shown as red with letters ABCD in the site plan (Ex.P5) is part of *Sabji Mandi Chowk*, Jadla and is brick-lined by Gram Panchayat-defendant No.2. The Sabji Mandi is frequented by all the villagers including the plaintiffs for the purpose of selling and purchasing vegetables. The shop of plaintiffs is situated on the northern side of the suit property (shown with yellow colour).

4. Earlier, a civil suit No.150 of 1978 titled as 'Gian Chand Vs. Gandharv Singh and others' was filed wherein the suit property was held as part of *Sabji Mandi Chowk* and the defendant in that suit/his successor were not allowed to raise construction in and over the suit property. In connivance with the members and *Sarpanch* of *Gram Panchayat*, defendant No.1 threatened to raise construction by making encroachment over the suit property and further to raise projection over his shop in and over the suit property. In case, he succeeded in doing so, the plaintiffs and general public will suffer irreparable loss and injury. The plaintiffs sought relief of permanent injunction to restrain the defendant from raising any construction and from encroaching upon the suit property or from making projection in and over the suit property, by way of present suit.

5. Defendant No.1 contested plaintiffs' claim in his written statement, inter-alia pleading that there is no *chowk* known as *Sabji Mandi Chowk* in village Jadla. The *chowk* situated opposite the shop of defendant

had earlier filed a suit for mandatory injunction against defendant No.1 on 11.01.1996, which was registered as Civil Suit No.RBT-1010/2000 and was decided on 11.12.2000. That suit was dismissed by the Court of Civil Judge (Junior Division), Nawanshahr and the present suit had been filed by plaintiffs to take revenge for the defeat in that suit. The suit had become infructuous as the construction of the shop had already been raised and completed without encroaching upon any part of land belonging to *Gram Panchayat*. Only plastering, laying of brick flooring and opening of lintel remained to be done.

6. In the earlier suit titled 'Gian Chand Vs. Gandharv Singh and others', defendant No.1 was not a party and no adverse findings were recorded against him. The defendant had constructed his shop after demolishing the same on the same venue and had not encroached upon any part of *chowk Medhian Wala*. The shop was purchased by defendant No.1 with his wife Parveen Rani from Gain Chand vide sale deed dated 10.07.1992, as such, the suit is bad for non-joinder of other co-owner as necessary party.

7. *Gram Panchayat* filed separate written statement alleging that plaintiffs have no concern with the suit property, which is under the ownership of *Gram Panchayat*. It was admitted that the suit property is part of *Sabji Mandi Chowk*, Jadla and was brick-lined by *Gram Panchayat*. In the earlier suit titled as 'Gian Chand Vs. Gandharv Singh and others', bearing No.CS-150 of 1978, *Gram Panchayat* was not a party. *Gram Panchayat*, however, stated nothing about the encroachment over the suit property by

defendant no.1, taking of any remedial steps by it, rather defended the suit as

if the relief of injunction was sought against it.

8. Plaintiffs re-asserted their case in the replication and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the suit has been properly filed by the plaintiffs?OPP
- (2) Whether suit property is common among the residents of the vicinity and other inhabitants of the village ?OPP
- (3) Whether plaintiffs are entitled for permanent injunction as prayed for?OPP
- (4) Whether the suit is filed by plaintiffs in collusion with defendant *Gram Panchayat*, if so, its effect?OPD
- (5) Whether the plaintiffs furnished incorrect site plan, if so, its effect?OPD
- (6) Whether the suit is not maintainable in present form?OPD
- (7) Whether the description of suit property has not been properly furnished?OPD
- (8) Whether the suit is bad for non-joinder of necessary parties?OPD
- (9) Whether the plaintiffs have not come to the court with clean hands and suppressed material facts, if so, its effect?OPD
10. Whether the suit has already become infructuous? OPD
11. Whether no cause of action has accrued to plaintiffs to file the suit?OPD
12. Relief.

9. Learned Civil Judge (Junior Division), Nawanshahr dismissed the suit with the observations while deciding issue No.1, 3, 6 and 10 as

follows:-

(i) If the land of the *chowk* encroached by defendant no.1 vest in *Gram Panchayat*, action can be taken against the encroacher by the *Panchayat*. In this case, *Gram Panchayat* is not supporting the version of the plaintiffs.

(ii) The suit of the plaintiff has become infructuous as the constructions had already been raised by defendant No.1 over the disputed property.

10. Not satisfied, the plaintiffs filed appeal which was decided by Additional District Judge, Nawanshahr vide judgement dated 16.04.2009. It reversed the finding of the lower Court on issues No.1 and 2 with the observations that the suit property which is a *chowk* vest in *Gram Panchayat* and is meant for common use of inhabitants of village Jadla. The suit of the plaintiff filed in representative capacity being the inhabitants of the village was properly filed. However, on the issue as to whether the relief of permanent injunction can be allowed to the plaintiffs, the first Appellate Court held that the suit has already become infructuous. While affirming the findings of the lower Court, the first appellate Court observed that the construction at the spot had already been made before filing of the suit and it was only finishing which remained to be completed. It also observed that no encroachment had been made beyond the old steps already existing at the spot. In the earlier suit, there was no injunction against raising projection, as such raising of projection does not tantamount to encroachment of *Gram Panchayat's* land.

11. I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their assistance.

12. Learned counsel for the appellants has argued that learned Civil Judge (Junior Division), Nawanshahr dismissed the suit without going into the matter in controversy and looking into the evidence. The major question in controversy was evaded by observing that the suit property vests in *Gram Panchayat* and action can be initiated by the *Panchayat* at its own, while admittedly, suit property is a *chowk* used by all the residents of the village. The suit was filed in representative capacity after taking required permission. Both the Courts below have misread the evidence and ignored the findings regarding the suit property in the earlier suit, wherein it was held that Gian Chand previous owner of the shop owned by defendant No.1, was not owner of the site over which the southern wall in dispute had been built. That finding had become final. The first Appellate Court has brushed aside the controversy by observing that the shop has been constructed at the same site, where it existed earlier. The shop existed earlier on the encroached site of *Gram Panchayat*, as such, the findings of the first Appellate Court that there is no encroachment, are against the facts proved on record. In the earlier suit, the relief sought by Gian Chand to open doors and fix up shutters in the gates towards the land of *Gram Panchayat* was declined with the observation that this will result in appropriation of site in front of his gates by plaintiff (predecessor-in-interest of defendant No.1) to his own use. By raising projection, defendant No.1 has intruded over the *Gram Panchayat* land. Despite knowledge of all the facts and circumstances, *Gram Panchayat* had become a mute spectator and had taken no action against defendant No.1. Both the Court below have committed grave error of law and fact while observing that the suit has become infructuous as the

construction has already been raised before filing of the suit. Reliance was placed on the report of local commissioner who visited the spot 11 days after filing of the suit and had reported that recently raised construction existed at the spot. 11 days is a very long period to construct a shop. The foundation, walls can be raised within a day followed by laying of lintel the next day. The suit had not become infructuous, rather the Court should have moulded the relief by allowing the decree of mandatory injunction to demolish the construction illegal raised by the respondent-defendant No.1.

13. Learned counsel for respondent-defendant No.1 has argued that the suit filed by the appellants-plaintiffs was not maintainable. The construction was raised before filing of the suit and despite this fact, the appellants-plaintiffs have not amended the plaint to seek the relief of mandatory injunction. The report of local commissioner is clear that there existed construction at the spot. Defendant No.1 had raised construction of the shop at the same place, where it existed earlier. He had not encroached upon any part of the *chowk*. The dimension of the shop tally with the dimensions mentioned in the sale deed vide which the property was purchased. No substantial question of law or fact arises in this appeal requiring determination or to interfere with the concurrent findings of the Courts below.

14. On giving a careful thought to the submissions of learned counsel for the parties and perusal of the record and judgements of the Courts below, substantial question of law requiring determination which arises in this appeal is “*as to whether the findings of the Courts below are*

*and facts”.*

15. Before proceeding further, it will be pertinent to have a look on the judgement Ex.P6 in the earlier round of litigation initiated by Gian Chand, predecessor-in-interest of defendant No.1. He had filed suit seeking the relief of permanent injunction to restrain the defendants from obstructing him from fixing the shutters in his shop at places shown as red in the site plan, which was admittedly on southern side of his shop. In that suit, the findings were recorded about the dimensions of the shop in dispute as follows:-

- |    |                            |                   |
|----|----------------------------|-------------------|
| 1. | Width of eastern side wall | 11 feet 3 inches; |
| 2. | Width of western side wall | 12 feet.          |

There is no dispute regarding the dimensions of northern and southern side wall.

16. It was also observed in that case that plaintiff could not be allowed to open door and fix up shutters towards the common place meant for vegetable market. He was not owner of the site on which the wall in dispute i.e. southern wall of the shop had been built up. The relief of injunction was declined to him being a trespasser on *Panchayat* land. That judgement has attained finality as no appeal against that judgement was filed by Gian Chand, predecessor-in-interest of defendant No.1 or by defendant No.1 himself.

17. Perusal of site plan (Ex.P9) which was produced in the earlier suit by Gian Chand shows that Gian Chand intended to keep shutters in the southern wall of his shop towards the *chowk*, which was not allowed by the

Court. Defendant No.1 being successor-in-interest of Gian Chand is bound

by the observations made in that judgement.

18. Defendant No.1 has placed on record the site plan Ex.D1 of the shop with dimensions as follows:-

|       |   |                   |
|-------|---|-------------------|
| West  | : | 13 feet 7 inches; |
| East  | : | 11 feet 7 inches; |
| North | : | 34 feet 7 inches; |
| South | : | 32 feet 7 inches. |

19. As already discussed, in the earlier suit the dimensions of the eastern side wall was found to be 11 feet 3 inches and of western side wall as 12 feet. The site plan Ex.D1 in no manner tallies with the dimensions as given in the site plan Ex.P8 earlier filed by Gian Chand. The dimension given in site plan Ex.D1 are against the observations/finding recorded in para 9 of judgement Ex.P1 which have attained finality.

20. The first Appellate Court has recorded some sweeping observation in the judgement as follows:-

(i) Report of the local commissioner suggests that no encroachment had been made at the time of construction of the shop as the old steps to enter the shop were still in existence and no construction beyond the old steps have been made so as to encroach upon the street or *chowk* area and this indicate that no encroachment has been made by defendant No.1.

(ii) The projection of three feet towards the *chowk* is at 11 feet height from the ground level and cause no obstruction for movement of public in the suit property.

(iii) In the earlier suit, Gian Chand was not granted the permission to fix shutter on the southern side of the shop. The present suit does not

pertain to opening of doors for fixing any shutter on the southern side of this wall but is a simple suit for injunction to restrain defendant No.1 from raising construction and to encroach upon the suit land, as such, previous suit, in no manner, operate as a bar to raise construction by defendant No.1 Sadhu Ram.

(iv) The suit of the plaintiffs had become infructuous as the construction had already been raised before filing the suit and whatever construction has been raised by defendant No.1, the same cannot be said to be in the nature of any encroachment on the suit property.

21. It is apparent that the first Appellate Court had ignored the observations in the earlier suit filed by Gain Chand predecessor-in-interest of defendant No.1. **There was specific finding of the Court that the plaintiff has committed one feet encroachment on the site of *Gram Panchayat* and he is not owner of the site over which the wall in dispute i.e. southern wall of the shop had been built up.** The first Appellate Court has committed grave error of law and fact and has totally misread and ignored the findings in the civil suit filed by Gain Chand while holding that defendant No.1 has not encroached upon any site of the *Gram Panchayat*. The shop is situated in a commercial area. Even if, defendant No.1 has raised construction of southern wall on the same site where the earlier wall was existing, still it is encroachment over the *Gram Panchayat* land as observed in the earlier judgement (Ex.P1/P8). Defendant No.1 was required to take care of the fact that when he was raising construction, he should comply with the observations in the judgement in the earlier suit. His action

of keeping shutters/opening in the southern side while raising projection towards southern side towards *chowk* are act of defiance and clear violation of the directions in the earlier judgement (Ex.P8).

22. Learned first Appellate Court has committed grave error while recording the finding that in the instant suit, plaintiff has not sought any relief to restrain defendant No.1 from fixing any shutter on the southern side wall. Such observations were already recorded in the earlier judgement (Ex.P3). The plaintiffs filed suit to restrain defendant No.1 from raising any construction, encroaching upon suit property and constructing any projection in and over the property. When the predecessor-in-interest of defendant No.1 had already been declined the relief in earlier suit to fix any shutter in southern wall of the shop, he (defendant No.1) could not be allowed to violate the court's judgement (Ex.P1) by keeping shutters in southern wall. The findings as recorded by the first Appellate Court are perverse and have resulted in failure of justice and defiance of the findings recorded in the earlier suit filed by predecessor-in-interest of defendant No.1.

23. The next question which weighed heavily before the Courts below is as to whether the relief of injunction could be modified. Counsel for the defendant has not disputed the settled proposition of law that in case, it is found that the construction had been raised after filing of the suit, the relief sought by the plaintiff could be modified and relief of mandatory injunction could be allowed. Reference in this regard can also be made to ***Balbir Singh Vs. Jagir Singh 1993(3) PLR 419*** and ***Sadhu Singh and others Vs. Thakardawara Bhagwan Narainji 2007(1) PLR 704***. The first Appellate

found that recent construction had been raised. The report of local commissioner was placed on record as Ex.D4, which reads as follows:-

“1. That the property of the defendant shown in yellow colour is a shop of the defendant Sadhu Ram. The shop appears to have been raised recently since the shuttering supporting the lintel was there and the lintel of the roof of the shop which is about 13 feet in height from the level of the ground has been extended towards the disputed site by about 3 feet in width. There are three doors of the shop opening into the suit property and the openings are opened and closed with the shutters. The extension is the roof in the form of projection.

2. That there is a stair case in the shop constructed on the eastern side alongwith the wall and the steps of the stair case turns on the projection and there are some steps constructed on the projection.”

24. The suit was filed on 21.05.2002. The local commissioner had visited the spot on 01.06.2002 i.e. on 12<sup>th</sup> day after filing of the suit. There was new construction of a shop of about 34X12 feet. It is a matter of common knowledge that it does not take much time to raise walls of the shop which can be constructed in a day or two. The shuttering for lintel can also be laid in a day and lintel can be cast within hours. When the local commissioner visited the spot, he found that it was a recent construction and the shuttering supporting the lintel was there. Defendant No.1 has kept three opening of the shop towards the *chowk*. The question which arises for consideration is that when the plaintiffs while filing the suit could seek the relief of mandatory injunction in case the construction had already been raised at the spot, there was no reason for them to feel shy in seeking the

appropriate relief. None of the wall constructed had been plastered when local commissioner visited the spot. The permission to raise further construction in the site owned by defendant No.1 was allowed by lower Court vide order dated 15.06.2002 with the rider that he will not encroach upon the common property in dispute.

25. Both the Courts below have wrongly drawn inference without there being any evidence on record that the construction had already been raised before filing of the suit. The Courts have misread the report of the local commissioner which nowhere indicate that the construction was made more than 12 days ago.

26. The *chowk* towards which the construction was made is a public property and a duty is also cast on the Court to protect the public property/*Gram Panchayat* land from being encroached. Both the Courts have rather allowed defendant No.1 to go against the findings recorded in the earlier litigation and to infringe the direction contained therein with impunity.

27. In view of my discussion above, I am of the considered opinion that the findings recorded by the Courts below are based on misreading of evidence on record and are perverse, against law and facts. Substantial question of law framed for determination in this case is decided in favour of the appellants-plaintiffs and against the respondent-defendant No.1.

28. In view of my above findings, this appeal has merits and the same is accepted. The suit of the appellants-plaintiffs is decreed and respondent-defendant No.1 is restrained from raising any construction or

As defendant No.1 had raised construction over the suit property during pendency of the suit, he is directed to remove the same including the projections towards the *chowk* side within three months of this judgement. The plaintiffs shall also be entitled to costs of the suit throughout. Counsel fee is assessed ₹20,000/-.

**October 30, 2015.**  
*Sachin M.*

**( SURINDER GUPTA )**  
**JUDGE**

***Whether to be referred to Reporters:                      Yes/No***