

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

RSA No.2745 of 2010(O&M)
Date of decision: 09.02.2015

Shiv Shankar

...Appellant

Versus

Vijay Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Surinder Garg, Advocate for the appellant.

1. Whether reporters of 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was decreed by the trial court vide judgment and decree dated 09.05.2007. Appeal preferred against the said decree failed and was dismissed on 05.11.2009. This is how, defendant No.1 is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a decree for permanent injunction, restraining the defendants from encroaching any portion of the rasta i.e. 4 karams (22 feet) in width, shown in red colour and marked as ABC in the site plan appended with the plaint. And also to direct the defendants to remove the encroachment upon an area measuring 10' 3" x 40", out of rasta of 4 karams. It was

averred that plaintiffs had purchased $\frac{1}{2}$ share of a plot measuring 3 kanals, comprised in killa No.7/2-8, 14 Min/0-12, situated in the area of Kotkapura, from one Kirpal Singh son of Mahi Singh. It was maintained that there already existed a rasta measuring 4 karams (22 feet) in width at the time when the plaintiffs purchased the said plot. The said passage was shown in red colour and marked as ABC in the site plan. Further, a passage 20 feet in width leads to the plot of the plaintiffs from the main rasta that was 22 feet in width. And both these passages exist from the time when the aforesaid plot was purchased by the plaintiffs. Further, the said passage was commonly used by the plaintiffs and defendants to approach their respective plots. As defendant No.1 had purchased a land from defendants No.2 to 4, adjacent to the passage in question, he in connivance with defendants No.2 to 4 was trying to encroach upon the said passage by raising illegal construction. Plaintiffs requested the defendants not to cause any encroachment upon the said passage, but to no avail. Thus, the suit.

In defence, it was pleaded, inter alia, that an area measuring 2 kanals 8 marlas was sold to the plaintiffs out of killa No.7 and an area measuring 12 marlas was sold out of killa No.14. A passage measuring 20 feet in width was given to the plaintiffs through the centre of killa No.7, killa No.14 and killa No.17 running from north to south. It was maintained

that killa No.7 was shown by letters ABCD. And site A to D and C to E was 40 karams and A to D was 36 karams. Pursuant to sale deed dated 18.05.1983, executed in favour of the plaintiffs, they were to get a land measuring 2 kanals and 8 marlas out of this khasra number with a 20 feet wide passage from the centre of this killa. Thus, width of the broken killa No.7 on both sides of passage remains 18 karams and 1 feet. To complete 2 kanals 8 marlas, plaintiffs required 23 karams and 4 feet length of killa No.7 on their half side. Remaining portion of killa No.7 i.e. 12 karams 1½ feet, is required to be in possession of the original owner and their vendees including the passage. Further, the original owner also sold a land measuring 1 kanal 6 marlas to defendant No.1, out of killa No.148/7, and the remaining area measuring 7 marlas was left as "Marhi" of ancestors of the owner. It was maintained that a wall was constructed over an area measuring 7½ karams of killa No.7 and ½ karam was left outside towards the passage to give support to the wall. It was averred that a land measuring 8 kanals, shown by letters JKED in the site plan, and the area under the passage was 36x4 =16 marlas. It was claimed that defendant No.1 had constructed a wall around the area purchased by him and he had not encroached upon any area in excess of his entitlement.

On a consideration of the matter in issue and the evidence on record, the courts below found that originally Kirpal Singh and his sons were the owners of the property in dispute. Plaintiffs had purchased their plot from Kirpal Singh. Whereas, defendant No.1 had purchased his plot from the sons of Kirpal Singh. Sale deed dated 18.05.1983, Ex.P2, executed in favour of the plaintiffs, recites that there exist a 4 karams passage on the eastern side, which goes up to 44 karams and then turns towards killa No.148/8. And leads right up to that killa number. The said sale deed was also signed by Baldev Singh and Sukhdev Singh sons of Kirpal Singh, vendees of defendant No.1. Therefore, it was concluded that there existed a passage that was 4 karams in width and would lead upto killa No.148/8. The said passage was duly depicted in the site plan (Ex.P1), marked as ABC. In fact, there was no dispute as regards the existence of the said passage from points A to B. However, from points B to C, the defendants were purported to have encroached upon the said passage by constructing a wall. Sanjiv Kumar Mittal i.e. Local Commissioner, vide his report Ex.P10, and site plan Ex.P11, proved the encroachment caused by the defendants on the passage from points K to N. The said report further revealed that as a result of encroachment caused, the passage was reduced to 11 feet and 8 inches. And thereafter, a wall measuring 1½ feet in height was also constructed by the

defendants and as a result, 5 feet passage and an area of khal measuring 4 feet was encroached by the defendants in their plot. That being so, it was concluded that defendants had indeed encroached upon the passage in question by constructing a wall illegally and forcibly. So much so, Shiv Shanker (DW1) testified in his cross-examination, that on the eastern southern corner of the plot of the plaintiffs, there existed a rasta. He also admitted a rasta on the southern side that was shown in the site plan (Ex.P1) and marked as B to C. He further admitted that rasta B to C was 20 feet in width and would lead to the land of the plaintiffs. He also testified that the rasta shown in the site plan (Ex.P1) and marked as D1 was in use on the spot. Still further, he also admitted that the rasta shown as mark D2 in the site plan (Ex.P1) and shown as CB was also in use at the spot and the width of the said rasta was 22 feet. That being so, defendant Shiv Shanker admitted in his cross-examination the existence of a rasta on the spot, as purported by the plaintiffs and shown in the site plan (Ex.P1). Defendants also admitted that they were constructing the wall, when the Local Commissioner Sh. Sanjiv Kumar Mittal, Advocate, reached at the spot. The report submitted by the Local Commissioner (Ex.P10) and the site plan appended thereto, proved the encroachment caused by the defendants upon the rasta. Resultantly, the suit was decreed. The appeal

filed against the said decree, by defendant No.1, failed and was accordingly dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiffs to succeed, they were required to substantiate that the defendant had indeed encroached upon a portion of the passage in question. The report submitted by the Local Commissioner (Ex.P10) along with site plan (Ex.P11) proved that the defendant indeed encroached upon a portion of the rasta from point K to N, depicted in the site plan. Further, as a result of the encroachment caused, the width of the passage was reduced to 11' x 8". As a wall measuring 1½ feet in height was found to have been constructed by the defendant, resultantly, an area measuring 5 feet that formed part of the passage and an area measuring 4 feet that was a part of the khal was merged by the defendant in his plot. That being so, defendant was rightly directed to

remove the encroachment caused upon the passage i.e. 10' 3" x 40", out of a 4 karams wide rasta/passage. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 9, 2015
Rajan

(Arun Palli)
Judge