

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2490 of 2012 (O & M)

Date of Decision: *December 07, 2015*

Bhan Ram

..... APPELLANT

VERSUS

Baljit Singh

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Mr. Sunil Narang, Advocate, for the appellant.

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Jaspal Singh, J

1. The instant appeal has been preferred by plaintiff No.1 – Bhan Ram challenging judgment and decree dated May 17, 2011 passed by the trial court as well as judgment & decree dated February 06, 2012 passed by the lower appellate court, whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiff against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for permanent injunction has been dismissed while holding that street in question is not a personal street of plaintiffs, rather it is a public street and defendant cannot be restrained from opening door, window or ventilator in it.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that street in question MNO (Z) shown in the site plan Ex.PW-4/B was exclusive and private street of the appellant – plaintiffs which has been left by him out of their property for their personal use and as and when access to their house. The house of the defendant has been situated on the southern side of the street but the defendant has no right of its use. Infact, house of the defendant opens in the street shown with Letter X in the site plan. Taking advantage of the fact that open plot of the respondent – defendant was situated on the intervening street X and Z, he intends to use the street ‘Z’. Infact, the defendant is nothing to do with the same and has got n o right or interest in it. Moreover, there exists no ventilator, window or gate/door or other opening of the property of the defendant in the street in question. The most trustworthy cogent and convincing evidence brought by the appellant – plaintiff in the shape of testimony of PWs Nikka Ram and Avtar Singh has been discarded and dis-believed by the courts below without assigning any cogent reason which has caused a lot of prejudice to the appellant – plaintiff. Thus, the findings recorded by the courts below with regard to the nature of street as a public street as well as impugned judgments & decrees are not sustainable in the eyes of law and same are liable to be set aside by way of acceptance of instant appeal.

3. After bestowing due consideration and scrutinizing the impugned judgments & decrees, this Court does not find any substance in the various contentions raised by learned counsel for the appellant.

4. The main controversy involved in the instant list is whether the street ‘Z’ shown in the site plan Ex.PW-4/B is a public street or a private street of appellant – plaintiff, which can be said to be a bone of contention.

Undoubtedly, a glance at the site plan Ex.PW-4/B depicts that on both the sides of disputed street shown as 'Z' in the site plan, there are the properties of various persons which is being used by them. Apart from the existence of various houses abutting the street 'Z', the houses of Chetu, Santa, Bari Ram etc. are located besides the houses of plaintiff Bhan Ram, Piara Singh and defendant Baljit Singh. Not only this, even an opening belonging to defendant Baljit Singh also abuts the street 'Z'. The plaintiff is obliged to prove that street 'Z' is a public street carved out from the property but to the utter surprise, no such evidence has been brought on record by them. There are concurrent findings recorded by the lower court, affirmed by the lower appellate court to arrive at a conclusion that property in suit is a public street and not an exclusive or personal property of the appellant – plaintiff.

5. Appellant Bhan Ram, one of the plaintiffs, while appearing in the witness box as PW-1, during his cross examination has categorically admitted that the street in dispute was brick paved by the gram panchayat. He remained Sarpanch of the village. Moreover, a perusal of the site plan Ex.PW-4/B also transpires that there are three streets abutting the house of defendant and all these streets were brick paved by the gram panchayat. This fact alone is sufficient to infer that the property in suit is a public street and vest in the gram panchayat. Moreover, it is also well settled that admission of a party is the best proof to establish a particular fact and in the case in hand, Bhan Ram, appellant – plaintiff has admitted in unambiguous words that every villager has a right to use the disputed street being public street. Even otherwise, it appears that the suit has been filed by the plaintiffs just to circumvent the implementation of the order passed by the Sub Divisional Magistrate and the appellant – plaintiff cannot be termed to have approached

6. In the light of what has been discussed above, this Court is of the considered view that there is no infirmity, illegality and impropriety in the judgment & decree passed by the trial court which has been upheld by the lower appellate court. The instant appeal being devoid of merits stands dismissed with no order as to costs.

December 07, 2015
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(Jaspal Singh)
Judge