

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

Date of decision: 27.11.2015

1. RSA No.3852 of 2012 (O&M)

Sukhjeet Kaur and others

... Appellants

Vs.

Jagtar Singh and others

... Respondents

2. RSA No.4285 of 2012 (O&M)

Sukhjeet Kaur and others

... Appellants

Vs.

M.C. Ludhiana and others

... Respondents

3. RSA No.4411 of 2012 (O&M)

Sukhjeet Kaur and others

... Appellants

Vs.

Jagtar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Jaswant Singh, Advocate
for the appellants.**

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of abovementioned three Regular Second Appeals filed at the instance of Sukhjeet Kaur and others. Suit filed by Sukhjeet Kaur was decreed and whereas suit filed by Jagtar Singh was dismissed. Three appeals were filed before the learned appellate court one by M.C. Ludhiana and two by Jagtar Singh one against dismissal of his own suit and another against the findings in the suit of the present appellant. The facts emanating from the respective pleadings of the parties to the lis that one Mohinder Kaur was owner of 400 square yards property and on her death, property devolved upon her grandsons. Sukhjeet Kaur is widow of Tarlochan Singh. Jagtar Singh acquired the ownership of property measuring 210 square yards on account of registered sale deed dated 18.03.1980. In the abovementioned registered sale deed, property agreed to be sold/purchased was fully described by boundary and it was specifically mentioned that Jagtar Singh was erstwhile owner of the property. The trial Court on the basis of the report of the Local Commissioner and various other documentary evidence/facts decreed the suit of Sukhjeet Kaur and dismissed the suit of Jagtar Singh.

Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. Jaswant Singh, Advocate submits that lower appellate court reversed the findings without noticing the following facts : -

- (i) That it was a purely simplicitor injunction suit.
- (ii) The local commissioner report shows that it was the street being used by Mohinder, was out of the land owned by her and not a public street.
- (iii) M.C. failed to produce on record with regard to the ownership of the public street.

(iv) No proof by implementation of Town Planning scheme except an order of the Governor had been placed on record.

Previous order reveals that service on respondents No.1 & 2 had been effected but there is no representation on their behalf. As per the statements suffered by learned Senior Counsel the service on remaining respondents was dispensed with. Order dated 10.08.2015 reads thus: -

“Learned Senior counsel for the appellants submits that respondent Nos. 1 and 2 are the only contesting respondents. According to him, rest of the respondents are proforma respondents and are not necessary to be served and their service be dispensed with.

Service upon other respondents is dispensed with.

Respondent Nos. 1 and 2 have been served. None has put in appearance on their behalf.

Record of the trial court has been received.

To come up for arguments on 27.11.2015.

Photocopy of the order be placed on the files of connected cases.’

I have heard learned counsel for the appellants and appraised the paper book and of the view that the impugned order is liable to be set aside.

Municipal Corporation did not discharge the burden of proving that the Town Planning scheme had actually been implemented/elevated. In essence, whether any amount of compensation was paid to the owner or not. Had the Town Planning scheme on 07.11.1976 been implemented, the same would have been reflected in revenue record. Mohinder Kaur could not have sold the property to Jagtar Singh. The sale deed dated 18.03.1980 shows that on the eastern side of the property/land after selling the area measuring 210 square yards there is no reference of street rather there is property/land owned by Mohinder

Kaur. The jamabandi produced on record also shows that Mohinder Kaur was owner of the remaining land measuring 190 square yards. The lower appellate court has not examined the report of local commissioner in reversing the judgment and decree of the trial Court much less the jamabandi and as well as particulars of the same. The sale deed is a registered document which has legal sanctity and has not been challenged. In my view the lower appellate court had been swayed away from the fact that MC that Town Planning scheme had been implemented. In my view the Town Planning scheme was only a paper transaction as there is no reflection of the same in the revenue record.

Keeping in view the aforementioned circumstances, the impugned judgment and decree of the lower appellate court is hereby set aside and judgment and decree of the trial Court in civil suit No.69 dated 02.02.1995 is restored/upheld in essence that suit is decreed whereas the civil suit bearing No.103 of 20.02.1995 filed by Jagtar Singh is accordingly dismissed.

Accordingly, RSA Nos.3852 of 2012, RSA No.4285 of 2012 and RSA No.4411 of 2012 stands allowed.

[AMIT RAWAL]
JUDGE

27.11.2015
vishnu