

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4002 of 2012 (O&M)

Date of Decision: March 13, 2015

Mangat Ram Gupta and another

...Appellants

Versus

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGHPresent: Mr.Amit Jain, Advocate
for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Mangat Ram Gupta and Kavita Gupta have filed this regular second appeal against Pawan Kumar respondent-plaintiff, Jaswant Rai and Rajinder Singh respondents-defendants challenging the judgment and decree dated 12.12.2009 passed by learned Civil Judge (Junior Division), Ludhiana vide which the suit filed by the respondent-plaintiff was decreed and judgment and decree dated 05.06.2012 passed by learned District Judge, Ludhiana, vide which appeal filed by the appellants was dismissed.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that Pawan Kumar respondent-plaintiff filed a suit against Mrs.Kavita Gupta, Mr.Mangat Ram, Mr.Jaswant Rai and Mr.Rajinder Singh, for grant of permanent injunction restraining the defendants, their agents and employees

from constructing or interfering in the use of common passage shown in red colour in the plan attached and part of property No.B-IX-1050, 1051, 1052, 1053 and 1054 in any manner and further restraining the defendants from removing sign boards of the plaintiffs on the main gate Marked-A and restraining the defendants from raising any construction in the common passage and from changing the existing condition of the common passage.

The brief facts of the case are that plaintiff and his brother are owners of the property bearing No.B.IX.1055, Shivala Road, Ludhiana. They had purchased the suit property from Balwant Rai, Bhagwant Rai, Nirmala Devi, Bhagwanti, Harimohan, Kailash Kumari, Pragya Wati, Suhagwati, Avinash Chander, Satish Chander and Sunil Chander vide registered sale deeds dated 26.03.1982, 20.04.1982 and 19.04.1982. The plaintiff is using the said common passage since the date of purchase of the suit property and is running a firm under the name and style of M/s Suraj Textiles and Parkash Industrial Corporation. He has displayed the sign boards of his firm Suraj Textiles on the main gate of common passage. On 08.07.1990, defendants No.1 and 2 collected the building material in the disputed common passage for closing it from the side of the property of the plaintiff.

Upon notice, defendants No.1 and 2 filed written statement and took preliminary objection of non joinder. On merits, it has been submitted that the passage in dispute is only for property No.B.IX-1050 to 1054. The property No.1055 is directly on the road and

between the passage and property No.B.IX.1055, there is property No.B.IX.1051 and owner property No.B.IX.1055 had no right or interest of ingress or outgress through this passage. The plaintiff has put up a board outside the passage illegally only after filing of the suit. It has been denied that the plaintiff and his brother were using the common passage peacefully and without any obstruction from the date of purchase. It is further stated that in 1982, the alleged door was closed and there was no ingress and outgress in the property No.B.IX.1055 from this side as alleged. The door was opened by the plaintiff just before filing of the present suit and now plaintiff has started packing material in the passage and is causing obstructions. There is also parking of cycles and scooters in the passage, which is causing serious obstructions.

Learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 12.12.2009, decreed the suit of the plaintiff as prayed for. Mangat Ram Gupta and Kavita Gupta filed appeal and learned District Judge, Ludhiana vide judgment and decree dated 05.6.2012 upheld the judgment and decree passed by learned Civil Judge (Junior Division), Ludhiana and dismissed the appeal.

The perusal of the record shows that both the Courts have given concurrent findings of fact by discussing the material evidence produced by the parties. Learned counsel for the appellants while disputing the findings of fact argued that the passage in dispute is not a common passage and it is not meant for use of the plaintiff. He

argued that findings of the Courts below are incorrect and not as per evidence.

The perusal of the judgment passed by learned Civil Judge (Junior Division), Ludhiana shows that the Court relied upon the admissions made by the defendants as well as their witnesses that plaintiff was using common passage after purchase of the property. The plaintiff has also placed on record certified copies of the sale deeds dated 19.04.1982, 20.04.1982 and 26.03.1982, site plan and the photographs. The defendants also placed on record sale deeds dated 07.12.1989, 31.01.1991 and 23.08.1990, which means that sale deeds of the defendants are of the later dates. As per the statement of PW-1, this common passage being used by the inhabitants of the property bearing No.1050 to 1055 as it is a part of the main building. PW-3 stated that dispute took place between the parties because of blockage of the passage of the plaintiff by the defendants who put water in the common passage as the plaintiff was packing his goods there. PW-5 also supported the statement of the plaintiff.

Learned Civil Judge took note of the fact that majority of the witnessed examined by the defendants admitted that plaintiff is using the passage after the purchase of the property. All of them admitted that the door in question was in existence even before the purchase of the property by the plaintiff. DW-2 also admitted common passage as per Ex.PW5/1. Mostly the witnesses examined by the defendants are interested witnesses and had not visited the property of the plaintiff from inside and admitted that plaintiff is using the

common passage since the purchase of the property.

Much reliance cannot be placed on the compromise, which was got effected as alleged by the defendants with the intervention of the police.

The perusal of the findings given by the Courts below nowhere shows that these findings are perverse and not as per evidence on record. In no way, it can be held that the evidence produced by the parties, has not been appreciated in right perspective. The sale deeds were of the year 1982 and the dispute between the parties is not regarding the ownership of the property owned by the plaintiff. Therefore, there is no question of examining vendor to prove the sale deeds nor there is any necessity to prove the title of the vendor. The defendants are not challenging the sale deeds in favour of the plaintiff. The common passage is admitted by the defendants. The only case of the defendants is that this passage is not for the plaintiff but for the other inhabitants of the main building.

From the perusal of the evidence on record, in no way, it can be held that findings of the Courts below are perverse or not as per evidence. Both the Courts have given concurrent findings correctly regarding the common passage. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

March 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE