

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

**Regular Second Appeal No.2034 of 2013 (O&M)
Date of decision : 23.04.2015**

Ved Pal @ Bed Pal & others

...Appellants

versus

The Housing Board, Haryana & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Singal, Advocate for the appellants.

RITU BAHRI, J (Oral)

The appellants-plaintiffs have come up in regular second appeal against the judgment of the trial Court dated 16.02.2011 and lower appellate Court dated 24.01.2013 whereby his suit for declaration and mandatory injunction has been dismissed.

The plaintiffs had filed a suit challenging the conveyance deed dated 07.05.2001 bearing Vasika No.848 of the Office of the Sub-Registrar, Panipat and the allotment order of the Housing Board, Haryana-defendant No.1 regarding public path marked with letters ABCDEFGHIJ in the site plan and adjoining house No.245 Weavers Colony, Assandh Road, Panipat being against the provisions of Haryana Housing Board Act, 1971 and sanctioned plan and scheme of the Housing Board Weavers Colony.

The Colony was planned in the year 1976. The case of the

plaintiffs was that the allotment of a plot made in favour of Smt. Sumitra Devi-defendant No.4 on 08.08.2004 included path which was for the common use and enjoyment of the inhabitants of the Weavers Colony.

On notice, reply was filed by defendants No.1 and 2 stating that there was a provision for public path adjoining to house No.245 and 246 in the Weavers Colony. But subsequently no utility was found and the same was abandoned. House No.245 was transferred in the name of Sumitra Devi as per the transfer policy of the Board on 17.02.1993 and thereafter the Board had allotted the incidental open space adjoining to the said house measuring 70.93 yards to her by executing a conveyance deed on 04.05.2000.

In the written statement filed by defendant No.4 Sumitra Devi, she raised the objection that the suit was barred by provisions under Order 2 Rule 2 of the Court. Existence of any public path on the side of her house was denied. The disputed land was allotted to her, vide letter dated 04.05.2000 @ Rs.1440/- per sr.yrd. and pursuant to that she deposited Rs. 1,02,140/-, vide demand draft dated 15.05.2000 and possession was delivered to her, vide letter dated 31.07.2000.

Following issues were framed by the trial Court:-

- “1. *Whether the conveyance deed dated 07.05.2001 is illegal? OPP.*
2. *Whether the suit is not maintainable? OPD.*
3. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*

4. *Whether the suit is bad for non-joinder of necessary parties? OPD.*
5. *Relief.”*

PW6 Ashok Kumar Sareen in his cross-examination admitted that it was an incidental open space in Weavers Colony. The open space existed on the southern side of house No.245 and 246 and the same was an incidental open space and was not reserved for any specific purpose. The said place was not meant for establishing park and there existed no passage through the same. After getting the report of the filed staff the same has been allotted to Sumitra Devi, owner of House No.245. In the site plan Ex.P1 existence of a road on eastern side of disputed plan had shown the existence of a park and as per the statement of PW6 Ashok Kumar Sareen the land was incidental open space adjoining to the road and was not reserved for a park or a path. In the conveyance deed Ex.P8, the disputed land being an incidental open space was allotted to Smt. Sumitra Devi-defendant No.4 with the condition that it shall be used for open purpose such as lawn, garden, etc. and no construction other than boundary wall will be allowed to be raised subject to exceptions, reservations, covenants and conditions contained in the Ex.P8. Moreover, DW3 Sandeep Jain through his affidavit of DW3/A resident of House No.246 had deposed that the disputed suit property had not ever been used as a park or as a path. The Courts came to a conclusion that the path was not being used by the inhabitants of the colony and being an incidental open space, the

Board had allotted by conveyance deed Ex.P8 the land to defendant No.4 with the conditions to keep it open and make no construction on it. The suit of the plaintiff has been dismissed by both the Courts below and no substantial question of law arises for adjudication in this appeal.

Dismissed.

23.04.2015
Vinay

(RITU BAHRI)
JUDGE