

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.71 of 2013.

Decided on:-January 29, 2015.

Joginder Singh.

.....Appellant.

Versus

Om Parkash and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Mani Ram Verma, Advocate
for the appellant.

None for respondent No.1.

Mr. Ashwani Verma, Advocate
for respondent No.2.

Dr. Bharat Bhushan Parsoon, J.

A suit for seeking a decree of permanent injunction had been filed by the plaintiff, respondent No.2 herein, interalia on the allegations that he is a co-sharer of the land described in the plaint, on western side of which there is 38½ feet wide Rasta Sare Aam which is also used as a passage to approach his land, as there is no other passage to go to his land. It was specifically pleaded that defendant Joginder Singh, now appellant, sometime ago started merging the land of this passage into his own land and sequelly had included specific portion of the passage in his fields and sequelly adjacent to his land now passage left was only 12 feet in width causing great

suffering and hardship to the respondent-plaintiff in passing his tractor-trolley through the passage in question. It was also clarified that the said passage ahead of and backwards to the portion lying adjacent to the land of the plaintiff, was 38½ feet wide everywhere. It was also claimed that whenever efforts were made for demarcation of the land, the defendant, appellant herein, had always been foiling such venture on one score or the other.

2. Contesting defendant, appellant herein, in his written statement had taken a definite stand that there was a passage on the western side of the land of the plaintiff and that Khasra number of the disputed passage was 188 and it was in the nature of Gair Mumkin Rasta. It was explained further that for the last many years inhabitants of the village instead of using the passage bearing Khasra No.188, had been passing through the land of the defendant, appellant herein, and on an objection having been raised by him, it was decided between Gram Panchayat, Hasinga and appellant-defendant that land underneath the disputed passage would be used by the appellant-defendant in lieu whereof inhabitants of the village would use the land owned by defendant No.1 bearing Khasra No.85//1, 10 and 11, as a passage. It is claimed by the appellant-defendant that right from that time, the villagers are using his land as a passage, whereas the land underneath the actual passage is under cultivation with the appellant-defendant.

Gram Panchayat, Hasinga was also impleaded as one of the defendants. It was on 30.3.2010. In written statement furnished by the Gram Panchayat, it was specifically conceded that on the western side of land of the plaintiff, there is Rasta Sare Aam which is owned by the Government and the same is running one and is in use at the spot. Dismissal of the suit was sought.

3. The parties had gone to trial on the following issues settled by

the lower court on 8.1.2011:

1. Whether the plaintiff is entitled to the relief of injunction as prayed for by him on the grounds so mentioned in the plaint? OPP
2. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPP
3. Whether the suit is not maintainable? OPD
4. Relief.

4. After receiving oral as well as documentary evidence from the parties, deciding all the issues in favour of the plaintiff, his suit for permanent as well as mandatory injunction succeeded and the defendant was permanently restrained from causing interference in the enjoyment of the passage in dispute as also against encroachment thereon. Against this judgment and decree dated 17.11.2011 of the lower court, appellant Joginder Singh had filed a civil appeal before the First Appellate Court where also the adjudication made by the court below had been upheld against the defendant, appellant herein on 14.8.2012.

5. In this Regular Second Appeal, though number of questions of law were formulated claiming those to be substantial but while issuing notice of motion on 11.1.2013, this Court had found that only one substantial question of law was involved for adjudication of this appeal. The same is as under:

“Whether Civil Court has jurisdiction to decide the issue whether the land is 'shamlat' or 'Panchayat Deh' and suit is maintainable in the present form or not?”

6. On this substantial question of law, the parties have addressed their arguments.

7. Though for respondent-plaintiff Om Parkash a counsel had been appearing earlier but on the date of argument i.e. 9.1.2015, none had appeared for him.

8. Before embarking upon the rival claims of the parties on this substantial question of law, it would be appropriate to take stock of the facts about which there is no dispute. On the western side of the land of the plaintiff, respondent No.1 herein, there is a passage in Khasra No.188 width of which is 38½ feet. Plea of the appellant-defendant that the Gram Panchayat had settled the matter whereby the land of passage was taken by him and he had given his land instead in exchange as the villagers were using his land as the passage and were not using the actual land of passage, had not been substantiated by the appellant-defendant. No particulars of such exchange such as date, month or year was provided. Both the courts below have concurrently held this matter against the defendant. There is no revenue record supporting the appellant-defendant.

9. During the course of evidence led by the parties, it has rather become evident that there is a road on western side of the land of the plaintiff used as a passage for approaching his land and that the land for such passage was acquired by the Government under the Land Acquisition Act, 1894 (for short, the 1894 Act). Defendant Joginder Singh when appeared as DW1 has conceded this fact of acquisition of his land for the passage by the Government but had raised a collateral issue that though compensation was paid to all the land owners whose land was acquired, he did not receive the said compensation. Merely because he has not withdrawn compensation amount from the reference court, is no ground to concede his claim. When it is a conceded fact even by the appellant-defendant that the land for the passage was acquired by the Government under the 1894 Act and compensation thereof was disbursed to the concerned land owners, it is

abundantly clear that the management and control of the passage on the acquired land is with the State Government under Section 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, the 1948 Act). Definition of Shamlat Deh as provided in Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the 1961 Act) is reproduced as under:

“Lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952 excluding lands reserved for the common purposes of a village as per Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act.”

10. Learned lower court has discussed this aspect at a considerable length and co-jointly referring to the provisions of Section 2(g) of the 1961 Act and Sections 18 and 23-A of the 1948 Act, the lower court had come to the conclusion that the passage in dispute sequelly would not fall within the expression Shamlat Deh and hence there is no question of application of Section 7 of the 1961 Act regarding eviction of the appellant-defendant from the encroached portion by the Gram Panchayat or for want of jurisdiction of the civil court. The facts are clear and are rather admitted ones. Clearly the passage is in the land acquired by the State Government. It does not fall within the term “Shamlat Deh” or “Panchayat Deh” and thus, Section 7 of the 1961 Act does not apply. There is concurrent finding of fact as well, against the appellant. Since the passage does not fall under the definition of Shamlat Deh or Panchayat Deh, the civil court has jurisdiction to decide the matter. Authorities cited by the appellant holding that jurisdiction of civil court is barred reported as ***Chhaju Ram Versus Nand Lal 1984 RRR 539***

(P&H) and **Jai Parkash Versus Ram Narain 2010(1) PLR 571 (P&H)** with due deference to the law laid down in these authorities, facts of the case being different, have no application and do not advance the cause of the appellant-defendant. Even if it is taken that the Gram Panchayat is to maintain the passage through it is proved that the same is to be maintained by the Government which acquired the land for the passage, even then in view of authority **Swaran Singh Versus Charan Singh and another 2004 Local Acts Reporter 161 (P&H)**, jurisdiction of the civil court is not ousted. This substantial question of law thus, is answered in favour of the respondent-plaintiff and against the appellant-defendant.

11. Sequelly, affirming the impugned judgment of the trial as also of the first Appellate Court, this appeal is dismissed. It is ordered that the appellant-defendant would remove the encroachment and clear the passage of 38½ feet wide adjacent to his land and would further permanently remain restrained from encroaching upon the said passage.

(Dr. Bharat Bhushan Parsoon)
Judge

January 29, 2015

'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes