

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

RSA No.1509 of 2014
Date of decision: 13.02.2015

Ba-Bapu Shiksha Samiti (Regd.)

...Appellant

Versus

Sudesh Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Mukesh Yadav, Advocate for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 31.03.2011. Appeal preferred against the said decree failed and was dismissed on 27.09.2013. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a decree for injunction, restraining the defendant from raising any construction over the suit property i.e. a passage or causing any obstruction therein. It was averred that the plaintiff was a registered society and it had constructed a Chhatrawas at Bus stand road Kaithal for the use of Scheduled Castes and Backward Class students. The property shown in yellow and green

colours in the site plan, appended with the plaint, was owned by Haryana Wakf Board. And portion shown in yellow colour was leased out to the defendant and green colour portion was in possession of Vivek Malik as tenant under the Wakf Board. Whereas, portion shown in red colour was earmarked as a passage by the Board to be used by the students of the hostel. As defendant threatened to change the nature and character of the passage by raising construction therein, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff intentionally did not describe the dimensions of the building i.e. Ba-Bapu Chhatrawas. And the suit property belonged to the Wakf Board and was never left for any public passage. In fact, defendant had left the suit property in favour of Vivek Malik. The passage was left to access the Kutia Swami Vasudev Ji Maharaj Dharamarth Trust, popular as Hari Chand Kutia. And now, plaintiff intended to encroach a part of the said red colour portion through its official i.e. Amrit Lal, Vice President, by interfering with the rights of the defendant to raise construction. And he (Amrit Lal) had even earlier filed a suit that was decided against him on 17.09.2005. Thus, plaintiff had no right in the suit land.

On a consideration of the matter in issue and evidence on record, the courts below found that plaintiff had failed to show any right, title or interest in the suit property. Undisputedly, the suit property belonged to Punjab Wakf

Board, as even reflected in the documents Ex.P1, Ex.P2, Ex.PW1/A, Ex.PW1/B & Ex.PW1/C. The plaintiff in support of his claim, had examined Sahabudin Rent Controller (PW1) and Niaz Mohamad (PW2). The testimony of Sahabudin (PW1) did not support the claim of the plaintiff. In fact, he proved that a land measuring 5170 sq. yards was leased out to Sudesh Kumar, who to left an area measuring 588.65 sq. yards, in favour of Vivek Malik, vide Ex.PW1/C. He also testified that A1, A2, A3, A4, A5, A6, A7 i.e. passage was in fact left by the tenant of the Wakf Board. And Ex.PW1/A, dated 31.03.1991, was a final plan. Further, Vivek Malik and Sandeep etc. had left the passage for their own use in the property of Wakf Board, as depicted in Ex.PW2/A. He also testified that the passage in question could not be used by any other person except the tenant of the Board, as the property belonged to the Board. And if at all, defendant intended to raise any construction thereon, he could do so by obtaining No Objection Certificate from the Wakf Board. Accordingly, he maintained that the plaintiff had no right to use the suit property i.e. the disputed passage. It was found that the land in dispute was bounded on both the sides by the land of Punjab Wakf Board. So much so, plaintiff had admitted that this land was given by Sudesh Kumar to Vivek Malik and it was Vivek Malik and Sudesh Kumar, who had left this area as a passage. Even, Niaz Mohamad (PW1/A) admitted in his

cross-examination that there was no order issued by the Wakf Board, vide which any passage was left for Chhatarawas. Therefore, it was found that the plaintiff had examined two witnesses, in favour of his claim, but the testimonies of both these witnesses did not support his claim. Accordingly, it was concluded that no cogent evidence was brought on record to show that the disputed passage was indeed left for use of Chhatrawas or in favour of Chhatrawas. Further, if a passage was left by any person for his personal use, it could not vest a right in the plaintiff to claim it as a passage. Thus, it was concluded that the disputed passage was left by Sudesh Kumar, Vivek Malik etc. for their personal use, and Wakf Board never issued any order leasing the suit property to be used as passage for the plaintiff. So much so, Sudesh Kumar i.e. defendant had filed a suit against Amrit Lal and it was held that there was no passage. Further, it was not disputed that passage was existing in khasra Nos.195, 196 and in the civil suit No.169/2001, it was discussed the khasra No.195.196, whether the defendant was entitled to use it or not. And in para No.16 of the judgment (Ex.D7), it was categorically mentioned, that as per learned counsel for the defendant under the garb of present suit, the plaintiff was trying to block the passage, which was being used by the public at large for the last more than 20 years and that the inmates of Chhatrawas and the public visits the hospital

situated on the northern side of the suit property. Meaning thereby, the passage in the present suit was already discussed in the judgment in which Amrit Lal as well as Sudesh Kumar were the party. And, it was held that plaintiff, who was defendant in that suit, had no right to use the passage and he was restrained to interfere in the enjoyment of the present defendant, as the present defendant was in lawful possession of the suit property. Therefore, the present plaintiff had no right on the suit property and it was held that there was Babu Chhatrawas, which was represented by Arjun Dass. And the present suit was clearly abuse of process of law and barred under constructive res judicata and under Section 11 (6) of Civil Procedure Code. Still further, first appellate court, having reviewed the matter in issue, observed that it is quite surprising that on one pretext or the other, the office bearers of the Management of the Society have entered into unending litigation. Earlier also, the suit was instituted by Amrit Lal wherein, Balbir Singh who has now been authorized by Institute, the suit, was examined as one of the witnesses. On the basis of the previous litigation, this court could gather the intention of the plaintiff, who is now appellant and also reflect upon his conduct that on one pretext or the other, they have been claiming the suit property to ingress and egress of Chhatrawas as a matter of right. Resultantly, the suit and

thereafter even the appeal preferred against the said decree failed and were accordingly dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to succeed, it was required to be proved that it indeed have any right, title or interest in the suit property. Concededly, the suit property that was being claimed as a passage was neither a public passage nor a private thoroughfare of the plaintiff. Plea of the plaintiff that Wakf Board had even marked the suit property as passage to be used by the students of Chhatrawas, also remained unsubstantiated on record. Witnesses examined by the plaintiff i.e. Sahabudin Rent Controller (PW1) and Niaz Mohamad (PW1/A) did not support the claim of the plaintiff. In fact, Sahabudin (PW1) proved on record that the land was leased out to Sudesh Kumar and Vivek Malik by the Wakf Board and the passage, as depicted in A1, A2, A3, A4, A5, A6,

A7, was in fact left by the tenant of the Board. He further proved that Vivek Malik and Sandeep etc. had left the passage for their own use, as could be made out from Ex.PW2/A. Both these officials of the Punjab Wakf Board had categorically testified that passage in question could only be used by the tenant of the Wakf Board and no other person could use the same. So much so, if the defendant even intended to construct, he could do so after obtaining No Objection Certificate from the Board. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 13, 2015
Rajan

(Arun Palli)
Judge