

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2225 of 2014 (O&M)
Date of decision:- 06.04.2015

Smt. Kailash Devi and anr.

...Appellants

Versus

Ranbir Singh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Surinder Gandhi, Advocate
for the appellants.

RITU BAHRI J.

The present regular second appeal is directed against the concurrent finding of facts recorded by both the Courts below whereby the suit of the plaintiff-respondents (for short 'respondents'), was decreed.

The respondents filed a suit for mandatory injunction for directing the defendants/appellants to remove and demolish the pucca structure/boundaries walls encroached upon the suit property marked by letters ABFGHIJK shown in red colour in site plan as mentioned in para Nos. 2 and 5 of the plaint and to restore the same in its original position along with a decree for prohibitory injunction not to make further encroachment over the suit property with the assertion that the respondents were

proprietors inhabitants of Pana "Assram" of village Kheri Sampla having shares in common and joint properties of Pana Assram in Shamlat and Abadi Deh. It was averred that suit property marked by letters ABCD in the site plan so attached was a Johri Pon bearing No. 35.

The facts of the matter in issue are that plot No. 37/5,37/6,37/7 and 37/8 besides other plots as shown in site plans Exhibit P1 and P2 annexed with the plain are owned and possessed by the respondents. There is a passage between plot No. 37/7 and 37/8. In southern side of plot No. 37/7, there is a pond which vests in the Gram Panchayat and bears plot No. 35.

The case of the respondents is that the appellants have made encroachment over the passage and a part of land compromised in Plot No. 35 as shown with red colour in the site plan Exhibit P-2 and made it part of their plots NO. 37/6,37/7 and 37/8. Further the case of the respondents is that they requested the appellants to remove the encroachment and demolish the unauthorized construction, but to no effect.

On notice, the appellants filed their written statement and denied having made any encroachment and pleaded that they had raised the construction over their own plots and no part of passage and pond had been encroached by them.

From the pleading of the parties, the following issues were laid down for adjudication by the learned trial Court:-

- “1. Whether the plaintiff is entitled for decree of mandatory injunction and consequential relief of permanent injunction as prayed for? OPP
2. Whether the present suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OP
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
5. Whether the plaintiff had not approached the Court with clean hands, if so to what effect? OPD
6. Relief.”

Before the trial Court, the entire suit revolves around the alleged encroachment made on the portion shown in the red colour in the sit plan as Ex P2. A local Commissioner was appointed to inspect the spot in the presence of the respondents as well as appellants, who made a detailed report Ex P5 in which he had found that the encroachment was in existence on the gali which is towards the western side of the school to the extent on the gali which is towards the western side of the school to the extent of 12 feet X 58 feet. Due to the encroachment, the gali i.e Rasta Sare Aam got closed down while the school had constructed four walls thereby encroaching the said gali in

question. The said encroachment shown in red colour in the site plan prepared by the Local Commissioner which is corroborated with the site plan produced by the respondents as Ex P2 as the portion EFGH. The appellants before the trial Court did not examine the local Commissioner as witness. The report of the Local Commissioner was proved by the Court as it was per se admissible and could be read in evidence without its being formally proved. The trial Court decreed the suit of the respondents to the effect that the appellants are directed to remove and demolish the pucca structure/boundary walls encroached upon the suit property, as shown in the report of the Local Commissioner dated 16.04.2008 within a period of 03 months.

On appeal, the lower Appellate Court affirmed the findings of the trial Court with regard to the report of the Local Commissioner. In para of its judgment, reference was made to application, which was moved by four other persons namely Anup Singh, Ram Kumar, Nahnu and Gram Panchayat under Section 7 of the Punjab Village Common Land Act, 1961 stating that Anup Singh etc had made encroachment over the passage which is now subject matter of the suit. This application was allowed by Assistant Collector, 1st Grade, Garhi Sampla vide order dated 10.11.2000 (Ex P3) and appeal against this order was dismissed by the Collector, Rohtak vide order dated

15.06.2001 (Ex P4). On inspection of the site plan by the Assistant Collector, 1st Grade, Garhi Sampla, it was found that the remaining part of the passage, which was in dispute in those proceedings had been encroached by Anup Singh etc and they were directed to remove the encroachment.

After going through the judgments passed by both the Courts below, it transpires that the appellants had not made any efforts to examine the Local Commissioner as witness. It is a settled law as held in the case of Shaik Fathima Bi v. Shaik Nanne Saheb (died) per P.Rs 2005(2) SCC 754 (A.P) M/s Multan Timber Store v. Rattan Chand Sood (deceased) through Lrs 1997 (4) RCR 236, Vemusetti Appayamma v. Lakshman Sahu AIR 1973 AP (168) that the report of the local Commissioner appointed by the Court has to be read in evidence without its being formally proved. It was held that party which takes exception against contents of such report must produce Local Commissioner in Court and established the objections raised as well founded.

In the present case, the local Commissioner made a detailed report Ex P5 in which he had found that the encroachment was in existence on the gali which is towards the western side of the school to the extent on the gali which is towards the western side of the school to the extent of 12 feet X 58 feet. Due to the encroachment, the gali i.e Rasta Sare Aam got closed down while the school had

constructed four walls thereby encroaching the said gali in question

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

April 06, 2015
G Arora

(RITU BAHRI)
JUDGE