

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2545 of 2014

Date of decision : September 21, 2015

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Sardool Singh and others

.....Appellants

Versus

Balbir Singh

.....Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Rakhi Sharma, Advocate for the appellants.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The appellants-defendants have come up in this regular second appeal against the judgment dated 16.1.2014 passed by the Additional District Judge, Amritsar, whereby an appeal filed by the respondent-plaintiff against the judgment dated 14.2.2013 passed by the Civil Judge (Junior Division), Amritsar was allowed and suit of the respondent-plaintiff for permanent injunction was decreed and the appellants-defendants were restrained from throwing wastage of houses and cattle in the suit land. Vide the trial Court judgment, the

suit of the respondent-plaintiff was dismissed.

The respondent-plaintiff had filed a suit that he was an agriculturist by profession and was a co-sharer in the suit land bearing khasra nos. 58/16 and 57/20 as per the jamabandi for the year 2004-05. The land in dispute adjoins the main road and it also adjoins the property of the respondent-plaintiff i.e residence of the plaintiff. The appellants-defendants, residents of the same village i.e Village Balia Manjpur, Tehsil and Distt. Amtirsar were throwing the wastage of houses and cattle and garbage in the land in dispute without any legal right to harm the respondent-plaintiff.

The appellants-defendants appeared before the trial Court and filed the written statements and took the stand that the respondent-plaintiff had not come to Court with clean hands and he was making an attempt to encroach upon the property over which he has no right or title and the Mazbi Sikh community of the village have been using the same for the last more than 50 years. Khasra No.58/16 and 57/20 are separate from the property and the respondent-plaintiff had no right, title or interest over the said property.

Following issues were framed by the trial Court:

- 1) Whether plaintiff is entitled to permanent injunction as prayed for? OPP.*
- 2) Whether suit is not legally maintainable in the present form? OPD.*

3) Whether plaintiff has no locus standi to file the present suit? OPD.

4) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.

5) Whether plaintiff has not come to the Court with clean hands? OPD.

The respondent-plaintiff was not able to prove that the property in dispute where the garbage was being dumped came under khasra no. 57 and 58. The demarcation report placed on record by the respondent-plaintiff was also silent with regard to the existing position of these numbers i.e khasra no. 57 and 58. Even the Aksh Sajra placed on record Ex. A-3 was not clear from which it can be ascertained that there are no pits on the property in dispute. No official from the revenue was summoned by the respondent-plaintiff to prove that his property i.e khasra no. 57 and 58 adjoins the main road or touches the main road and the pits are illegally used by the residents for throwing the garbage which is on the land of the respondent-plaintiff. As per the report of the Local Commissioner Ex. D-13, there was no residential house of the plaintiff adjoining the land bearing khasra no. 58/16 and 57/20 situated in village Balia Manjpur, Tehsil and Distt. Amritsar. It was further stated in the report that the residential house of the respondent-plaintiff is far away from the property in dispute. After going through the evidence, the trial Court dismissed the suit of the respondent-plaintiff.

On appeal, the lower appellate Court has reversed the finding and decreed the suit of the respondent-plaintiff.

The short question before the appellate Court was that whether there existed one karam width pits by the side of the road in which the appellants-defendants had been throwing their rubbish. Respondent-plaintiff appeared as PW-1 and his case was supported by PW-2 Pargat Singh. His affidavit Ex.PW2/A was to the effect that his suit land is adjoining the road where the appellants-defendants were throwing rubbish. In cross-examination, PW-2 stated that it is correct that immediately adjoining to the suit property, house of the plaintiff is not situated but same is situated at some distance away. PW-3 Balkar Singh also admitted in his cross-examination that residence of Balbir Singh is far away from the suit property. It was admitted that garbage was thrown by the community of Mazbi Sikhs of Village since long on the suit property.

Appellate Court examined the copies of the jamabandis for the year 2009-10 Ex.P-1 Ex.P-2 in which both the above said khasra numbers in dispute i.e 58/16 and 57/20 have been shown to be in joint ownership of the respondent-plaintiff along with other co-sharers. Respondent-plaintiff has been shown in cultivating possession of both the above said khasra numbers as co-sharer. P-3 is the copy of Aksh Sajra which shows existence of said khasra numbers in which road has been shown and further the khasra numbers in dispute have been shown which shows that these are adjoining the road. In this Aksh Sajra, there is no existence of any

pits. While examining Ex. P-2 i.e the Rapt demarcation, a finding has been given that on an application given by the respondent-plaintiff demarcation of the khasra no. 57/20 and 58/16 has been conducted by the revenue officials as per orders of Tehsildar.

The appellants-defendants examined DW-1 Sardool Singh, DW-2 Jaswant Singh, DW-3 Chanan Singh and DW-4 Piara Singh, DW-5 Pargat Singh and DW-6 Sh. Gurjit Singh Nagra, Advocate who was appointed as Local Commissioner.

DW-4, Piara Singh, Ex-Member Panchayat in cross-examination stated that Balbir Singh owns his land adjoining the main road which is the suit land. There is no land owned by Panchayat adjoining to the road and there were 400/500 houses of Mazbi community near the suit property. He admitted that the aforesaid community used to throw waste or garbage in the suit property. Witnesses could not lead any evidence to show that the land adjoining to road belonged to Panchayat in the form of any Jamabandi. However, they admitted that Mazbi Sikh community was having 400/500 houses and they were using this land to throw wastage or garbage. As per the deposition of DW-6 Sh. G.S Nagra, Advocate who was appointed as Local Commissioner, there is no residential house of the plaintiff adjoining to the land bearing khasra No. 58/16 and 57/20. Moreover, the said residential house of the plaintiff is 21/2 -3 killas away from the property in dispute. There was no reference to any pits where the garbage was being thrown by the appellants-defendants. Hence the existence of the pits did not find

mention in the report of the Local Commissioner. The defendants further placed on record Ex. D-1, an application made to the Prime Minister of India, Ex. D-2, certificate given by Panchayat, Ex. D-3, rough site plan and presence sheet, Ex. D-4 to Ex.D-9, photographs and Ex. D-12, a photograph showing the position that rubbish is being thrown on the land.

The appellate Court after going through the above said evidence came to the conclusion that even if the house of the respondent-plaintiff was not situated in khasra numbers in dispute i.e khasra no. 58/16 and 57/20 and was 2/3 killas away from the land in dispute but once this fact is established that the plaintiff is having the ownership of these khasra numbers as a co-sharer and in possession of the same and these khasra numbers adjoins the land which was being used for dumping the garbage, the inconvenience caused to the plaintiff could not be ignored. DW-4 witness of the defendant had admitted this fact that the suit property which is in the ownership of the respondent-plaintiff as a co-sharer is adjoining to the road where the appellants-defendants are stated to have been throwing waste material and rubbish of their houses. The non existence of the pits near the road and the land of the plaintiff has further been clarified by the report of the Local Commissioner. Since there was no pits existing and the ownership of the respondent-plaintiff as co-sharer stood proved the suit of the respondent-plaintiff has rightly been decreed by the appellate Court by setting aside the judgment passed by the trial Court. The findings of facts by the appellate Court are

not perverse and does not warrant interference of this Court.

In view of all that has been discussed above, no question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

September, 2015
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(**RITU BAHRI**)
JUDGE