

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

RSA No. 3679 of 2014 (O&M)

Date of Decision: 24.3.2015.

Nirmal Singh and others

..... Appellants

Versus

Sohan Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Sarju Puri, Advocate,
for the appellants.

K.C. PURI. J.

Challenge in this regular second appeal is to the judgment and decree dated 12.3.2014 passed by Sh. Arun Gupta, Additional District Judge, SBS Nagar vide which the appeal preferred by the plaintiff against the judgment and decree dated 27.11.2012 passed by Ms. Amandeep Kamboj, Civil Judge (Junior Division) Nawanshahar was accepted and the suit of the plaintiff for mandatory injunction and permanent injunction was decreed.

2. Briefly stated, the plaintiff-respondent No.1 filed suit for mandatory injunction and permanent injunction on the averments that the defendants are his near relations. The plaintiff further pleaded that he is residing in the property shown in blue colour in the site plan and on the northern side of his house, there is a joint passage/street which is ancestral and is common among the plaintiff and all the defendants and is shown in brown colour in the site plan. Across this street on the northern, eastern and

northern western corner of the street are the residential properties of the defendants as shown in the site plan. Plaintiff has alleged that with the consent of the parties and their predecessors in interest, the gram panchayat of village Mangat Dingaria (which was common panchayat of both villages, namely, Mangat and Dingarian earlier), laid brick flooring on this passage by keeping drains on both sides, for the discharge of water and waste water of the properties of the litigating parties. Plaintiff further stated that about 6 months ago, an NRI society, namely, Village Life Improvement Foundation, by their own contribution coupled with grant by the Deputy Commissioner, Nawanshahr, laid a sewerage system in the village for the welfare of the villagers and under that scheme a sewerage system had been laid underground this passage as well, which takes the waste water of the properties of the parties and discharges into the main sewage disposal system as depicted in the site plan, whereafter this passage was laid with concrete cement slabs by the said Village Life Improvement Foundation. Plaintiff has alleged that the daily waste water from his residence was discharged through underground system, as shown in red colour in the map, connecting the system with the main haudi shown in yellow colour and then into the main sewage system ultimately falling into a pond out side of village and further disposal thereof. Plaintiff has alleged that the defendants in connivance amongst themselves, in order to cause harm and damage to the plaintiff, obstructed the discharge of daily waste water from the house of the plaintiff through the existing underground sewerage connecting pipe shown at site in red colour in the map by threatening to damage the same, so the plaintiff filed the suit for permanent injunction. However, during the course of

proceedings before the trial Court, plaintiff alleged that the defendants damaged and blocked the same after breaking the existing pipe and the defendants have filled the same with cement and concrete mixture which is apparently distinguishable from the rest of the flooring of passage, being recently laid. The part of sewerage plastic pipe is still in existence in the haudi of the plaintiff and the northern wall of the plaintiff. Aggrieved, the plaintiff, with permission of trial court, filed amended plaint.

3. On notice, defendants filed the written statement taking preliminary objections that the plaintiff has approached the Court with soiled hands, as such is not entitled to the discretionary relief of injunction, plaintiff has got no locus standi, suit was not maintainable and plaintiff was barred by his act and conduct to file the suit. On merits, existence of joint passage/street of parties was denied. It was further denied that the said street was left by fore-fathers of the parties for common use of their successors-in-interest. The location of the properties of the defendants on the remaining sides of the said street, as alleged by the plaintiff, was admitted. However, it was pleaded that the said street was left for common use of the defendants alone out of their respective share of property and plaintiff has no concern with the same. It was further pleaded that the street was brick paved by the defendants out of their own pocket unlike the averments made by the plaintiff that it was brick laid by the said NRI society.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD

3. Whether the suit is not maintainable? OPD

4. Whether the site plan produced by the plaintiff is wrong ?OPD

5. Whether the plaintiff is barred by his act and principles of acquiescence, waiver and conduct to file the present suit ?OPD

6. Relief.

5. Learned trial Court has taken up issues No.1 & 2 together and decided both these issues against the plaintiff. However, issues No.3 to 5 were not pressed before the trial Court and as such the same were decided against the defendants. However, in view of findings on issues No.1 and 2, the suit of the plaintiff was dismissed.

6. Feeling dis-satisfied with the said judgment and decree dated 27.11.2012 passed by Ms. Amandeep Kamboj, Civil Judge (Junior Division), S.B.S. Nagar, the plaintiff preferred regular first appeal. The said first appeal was accepted by Sh. Arun Gupta, Additional District Judge, SBS Nagar vide judgment and decree dated 12.3.2014 and the suit of the plaintiff was decreed.

7. Feeling dis-satisfied, the defendants-appellants have directed the present appeal against the said judgment and decree dated 12.3.2014.

8. The appellants in paragraph No. 14 of the grounds of appeal have mentioned that following substantial questions of law are involved:-

i) Whether the impugned judgment and decree dated 12.3.2014 passed by the lower Appellate Court is wrong, illegal, perverse, erroneous and against the settled principles of law ?

ii) Whether the suit for permanent injunction filed by the

plaintiff is legally maintainable ?

iii) Whether in a suit for mandatory injunction, the plaintiff is required to first establish his legal right or any easementary right in respect of the suit property ?

iv) Whether a decree for mandatory injunction can be granted in the absence of any corresponding right in favour of the plaintiff ?

v) Whether the plaintiff has to stand on his own legs ?

vi) Whether the admissions are the best evidence and the facts admitted need not be proved ?

vii) Whether adverse inference is liable to be drawn against the party for withholding best evidence ?

9. It is submitted that judgment and decree dated 12.3.2014 is illegal, perverse, erroneous, against the settled principles of law and suit for permanent injunction was not legally maintainable as there was pipe fixed from the bathroom of the plaintiff in the sewerage in the private street. The plaintiff was required to establish his legal right or any easementary right in respect of suit property and only then suit for mandatory injunction can be decreed. It is settled law that plaintiff has to prove its own case. The appellate Court has lost sight regarding the admission made by the plaintiff. The best evidence has been withheld by the plaintiff. The street in question is the street owned by the defendants. Learned appellate Court has misinterpreted the evidence.

10. I have carefully considered the submissions made by learned counsel for the appellants and have gone through the record.

11. It is settled law that second appeal lies only in case any

substantial question of law is involved. The question of law mentioned by the appellants in paragraph No.14, in fact, cannot be said to be questions of law much less the substantial question of law. The dispute in the present case is whether plaintiff has right to use the sewerage lying in the street. The first appellate Court after appraisal of the evidence reached to the conclusion that plaintiff has right to use the sewerage. It is not disputed during the course of argument that sewerage line is laid down in the street. The Local Commissioner has visited the spot and found that bathroom of plaintiff is adjacent to the street in question and sewerage pipes were coming out which have been dismantled with the concrete. It is a civil dispute and it has to be decided on preponderance of evidence. The factum of street is admitted by counsel for the appellants during the course of arguments. It is also not disputed during the course of argument that sewerage pipe is there in the street. The defendants have failed to prove that said street is the personal street of the defendants. On the other hand, it is the definite case of the plaintiff that it is a street and sewerage pipes have been dismantled by the defendants. There is nothing on the record that judgment and decree dated 12.3.2014 passed by the first appellate Court is wrong, illegal, perverse, erroneous or against the principles of law. The sewerage was laid down in the year 2006 and the pipes of the sewerage were dismantled in the year 2007 which is said to be during the pendency of the suit. No objection to the report of Local Commission has been directed by the appellants. According to the report of the Local Commissioner, bathroom and toilet were constructed in the house abutting the street and there was also sign of undergoing soil pipe as shown in the site plan. The

street is cemented. The colour of cement and street and of damaged undergoing pipe as shown in the red colour are different. The garbage was also lying there. The plaintiff has a legal right to use the sewerage system laid down in the street. The judgment of the first appellate Court is based on legal evidence and there is nothing on the file that there is misreading or misinterpretation of the evidence on the file. There is nothing on the file that any evidence has been withheld by the plaintiff so, I have no hesitation in holding that no question of law much less any substantial question of law has arisen in the present case.

12. The appellants by their illegal act have deprived the plaintiff to use the sewerage in the street for the last about 7 years. Still they are agitating before this Court to support their false claim. The conduct of the appellants needs to be deprecated so, the appeal stands dismissed with costs of Rs.10,000/-.

13. A copy of this judgment be sent to the trial Court for compliance.

24.3.2015.
SN

(K.C. PURI)
JUDGE