

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

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Regular Second Appeal No.4187 of 2014

Date of Decision: December 14, 2015

Om Parkash

...Appellant

Versus

Jaipal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Narender Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Loharu, dated 11.10.2012, whereby the suit for permanent injunction preferred by the appellant-plaintiffs restraining respondents 1 to 5-defendants and their associates from raising any type of construction over the park/Mandir which has been earmarked as per the appellant-plaintiffs in the site plan which was shown to them at the time when they purchased their plots, situated in village Loharu, Tehsil Loharu, District Bhiwani, as mentioned in the head note of the plaint and for restraining the defendants from interfering into the construction work of the Mandir till the final decision of the case, stands dismissed, appeal against which preferred by the appellant-plaintiff No.5 also stands dismissed by the Additional District Judge, Bhiwani, on 19.03.2014.

2. It is the contention of learned counsel for the appellant that as per the map Exhibit P-2 showing the location of the plots which was in fact shown to the appellant-plaintiffs at the time when they purchased the plots

where they have now constructed their houses showed the suit property as a Shiv Mandir and park. He contends that the said map clearly depicts the said piece of land to be a Mandir and park which was for the benefit of the members of the locality, who are ultimately going to reside there as the appellant-plaintiffs but now the stand which is being taken by the respondents-defendants is contrary to the promise which has been held out to them at the time of selling the plots. He further contends that respondent-defendant No.1-Jaipal son of Hardeva Ram had, in the written statement which he had filed, admitted such a fact, however, respondent-defendant No.2-Kiran Kanta wife of Lalit Kumar has disputed the said assertion and has stated that there was no such land left out for the Shiv Mandir or the park, as has been asserted by the appellant-plaintiffs. He contends that once one of the persons (respondent-defendant No.1-Jaipal), who is also the seller of the plots has admitted the location of the park and Shiv Mandir in the written statement which has been filed, the Court should have accepted the same and proceeded to decide the case accordingly. He contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside as it has overlooked the material pleadings and the evidence which have been brought on record.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments but cannot accept the assertions, as has been made by him.

4. The onus was upon the appellant-plaintiffs to establish that the land which they are asserting was earmarked for the Shiv Mandir and the park was as such. The primary reliance on the part of the appellant-plaintiffs was upon the map Exhibit P-2 showing the location of the plots but

unfortunately the said map cannot be taken into consideration as the same does not bear the signatures of the respondents. In the absence of the signatures of the respondents, the said document cannot be accepted. That apart, except for the oral evidence which has been led by the plaintiffs, there is nothing on record which would show or indicate, what to say of prove, that the land in dispute was left for Shiv Mandir and park. Unfortunately for the appellant-plaintiffs, even the report of Local Commissioner, which has been placed on record, does not show that there existed a Shiv Mandir as was asserted by them. Merely because respondent-defendant No.1 has in his written statement at one stage admitted such a land having been left but unfortunately for them he has not appeared as a witness and respondent-defendant No.2-Kiran Kanta, who is admittedly one of the persons, who had sold the plots, has totally denied such an assertion. The findings as recorded by the Courts below, therefore, cannot be faulted with.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law arises in the present appeal, which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

December 14, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE