

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.10188-C of 2014 in/and
RSA No.4405 of 2014 (O&M)
Date of Decision: March 18, 2015**

Gurnam Singh and others

...Appellants

Versus

Dharampal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.L.S.Mann, Advocate
for the appellants.

INDERJIT SINGH, J.

CM No.10188-C of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 105 days in re-filing the appeal is condoned.

RSA No.4405 of 2014

Appellants Gurnam Singh, Manjit Singh and Balwant Singh have filed this regular second appeal against Dharampal respondent challenging the judgment and decree dated 01.09.2011 passed by learned Civil Judge (Junior Division), Nakodar vide which the suit filed by the respondent-plaintiff for grant of decree of permanent injunction restraining the defendants from interfering in the peaceful use and enjoyment of the street by the plaintiff and also restraining the defendants from blocking the street at point A to B by way of raising Wall and further restraining the defendants from encroaching upon the

street at point ABCD by way of making any kind of construction, was decreed and also challenging the judgment and decree dated 18.12.2013 passed by learned Addl. District Judge, Jalandhar vide which the appeal filed by the appellant was dismissed.

Learned counsel for the appellants, at the time of arguments, argued that the lower Courts have not appreciated the evidence in right perspective and the findings are perverse. He further argued that the Civil Court has no jurisdiction to decide this case and the suit is not maintainable.

After hearing learned counsel for the appellants and after going through the record, I find that the case of the plaintiff-respondent as stated in the plaint is that the door of the house of the plaintiff open in the disputed street and the plaintiff has been living along with his family members and has been enjoying the street for ingress and outgress for the last many years. The street from phirni/road starting from southern to northern side from the house of Gurmeet Singh, which is being used by public and residents of the vicinity, has been left by the Gram Panchayat upto the house of the plaintiff. The street has been bricked paved, which has been used by the plaintiff, defendants and other inhabitants of the village. It is further stated in the plaint that the defendants are planning to encroach upon street at point ABCD by making construction for which they have absolutely no right.

On the other hand, the defendant's case in the written statement before the lower Court is that site plan submitted by the

plaintiff is wrong. The defendants have also denied that any street as alleged by the plaintiff on the western side of house is in existence. The defendants have further alleged that the street in portion shown as ABCD in the site plan of the plaintiff, is part of the house of the defendants. The defendants have also denied that the phirni from southern to northern side has been left by the Gram Panchayat as alleged by the plaintiff and it has been brick paved by the Gram Panchayat as alleged by the plaintiff. The defendants further submitted that they are residing in their house for the last 35 years and have affixed a gate at point 'D' and at point 'AB' a room is in existence for the last many years. The defendants also alleged that 4000 to 5000 bricks are also lying in the portion of the property which is alleged to be street by the plaintiff.

Plaintiff examined himself as PW-1, Surjit Singh as PW-2, Aksh Deep as PW-3, Dalbir Singh as PW-4, Narinder Pal Bhatara draftsman as PW-5 and Gural Singh as PW-6 and tendered documents, site plan Ex.P1, Voter Identity card Ex.P2, electricity bill Ex.P3, telephone bill Ex.P4, proceedings books of Gram Panchayat Ex.P5, report of the Local Commissioner Ex.P6 to P9 and certified copy of order dated 13.10.2008 passed by Civil Judge (Junior Division), Nakodar Ex.PX.

On the other hand, the defendants have examined Manjit Singh, one of the defendant, as DW-1, Shangara Singh as DW-2, Kulwant Singh, Deed Writer as DW-3, Jago Singh, Addl. HRC, DC Office as DW-4, who brought the record the sale deed Ex.D1.

Learned Civil Judge (Junior Division), Nakodar decreed the suit after appreciating the evidence. The appeal filed by the defendants was also dismissed vide judgment and decree dated 18.12.2013 passed by learned Addl. District Judge, Jalandhar.

The perusal of the evidence on record nowhere shows that concurrent findings of fact given by the Courts below are against the evidence or some material evidence has not been considered by the Courts below. There is also nothing that any evidence has been misread by the Courts below. Learned Civil Judge (Junior Division), Nakodar after considering the evidence on record, rightly reached to the conclusion that there is a street in existence which is in dispute. The Court considered the sale deed dated 09.07.1976 Ex.D1, which pertains to the house of Boota Singh. The perusal of the sale deed show that on the western side of the house, a *chhapper* has been shown which rather confirm the averments of the plaintiff. It is admitted fact on the record that there was a *chhapper* on the western side of the house. It is also admitted that Gram Panchayat raised the wall on the bank of the *chhapper* leaving behind some space uptill the house of the plaintiff and defendants. It is apparent from the record that space was left by Gram Panchayat between wall and the house of the plaintiff, defendants and other residents of the area, who were residing opposite to the wall. The Court also reached to the conclusion that persons used that area as per their convenience. There is no cogent evidence on record to show that area marked ABCD in front of defendants' house is part of their house. The Court

reached to the conclusion that there is sufficient evidence that defendants placed some bricks and raised temporary *chhapper* and gate thereon and started claiming the same to be their own. The Court also reached to the conclusion that entire remaining left over space has been brick paved by the Gram Panchayat and Gram Panchayat could not brick paved the portion ABCD just because of hindrance created by the defendants. The Courts below further reached to the conclusion that the Panchayat Secretary has also brought on record copy of the proceeding book Ex.P5 as per which the Gram Panchayat had recorded the fact of encroachment of the street by the defendants. The report of the Local Commissioner also shows that portion ABCD has not been brick paved and is a *kacha* one.

Keeping in view the concurrent findings of the Courts below as discussed above, in no way, it can be held that the judgments and decrees are perverse or against the law.

Learned counsel for the appellants argued that under the Punjab Village Common Lands (Regulation) Act, 1961, the Civil Court has no jurisdiction to decide this case. On this point, he has cited judgment passed in ***Chanan Singh vs. Balkar Singh, 1986 PLJ 664 (P&H)***, which is suit in civil court for permanent injunction restraining defendant from making/removing encroachment on public street and it is held that site in dispute is a public street and vests in Gram Panchayat. The question of title arises whether land in dispute vests in Gram Panchayat or not. Jurisdiction of civil court to deal with point

in issue clearly taken away by Section 13 of the Act and the matter falls within exclusive jurisdiction of Assistant Collector 1st Grade. Learned counsel for the appellants further cited judgment passed by this Court in ***Jai Parkash vs. Ram Narain, 2010(1) RCR (Civil) 972***, in which also it is held that public street comes within the definition of Shamlat Deh and suit in civil court qua Shamlat Deh is not maintainable in view of Section 13-B of the Act and the Collector under Section 7 of the Act, has the power to remove illegal possession and encroachment and put Panchayat in possession.

The above cited judgments will not apply in the present case in view of the law laid down by this Court in ***Subedar Munshi Ram and another vs. State of Haryana and others, 1979 AIR (Punjab) 244***, in which it is held that suit is not barred as the dispute is between the private parties and the Gram Panchayat is not a party. It is also held by this Court in ***Arjan Singh and others vs. Ajit Singh and others, 2011(1) LAR 430***, that mere because plaintiffs claim themselves to be in actual possession of suit land being owners and proprietors of village would not mean that Section 13 of the Act could come into play thus barring jurisdiction of Civil Courts. Since no question of ownership or nature of suit land is involved in suit for permanent injunction and only prayer made is to restrain petitioners/defendants from interfering in their possession by way of discharge of rainy/dirty water in suit land, impugned order suffers from no illegality or perversity. In ***Swaran Singh vs. Charan Singh and another, 2004(2) PLR 187***, this Court held that suit for permanent

injunction to the effect that the defendants should not encroach upon any portion of Shamilat Abadi Deh, it is obvious that right in personam has been claimed vis-a-vis usage of passage air and light etc. and that no intrinsic right has been claimed vis-a-vis the property which is required to be maintained by the Gram Panchayat as per the provisions of the Act. It is further held that Civil Court has jurisdiction to entertain and try the suit for determining the rights. In the above-stated judgment, the law laid down in ***Subedar Munshi Ram's case (supra)*** has also been relied upon.

In view of the law laid down by this Court as stated above, the suit is maintainable as the plaintiff is not claiming any ownership or title right over the suit property. He is simply asking for injunction restraining the defendants from encroaching upon the street and the suit is between the private persons and further this relief of injunction is to be granted by the civil court and no title is to be decided between Gram Panchayat and private person. Therefore, the suit is maintainable and civil court has the jurisdiction.

From the above discussion, I find that findings of fact given by both the Courts below are correct, as per law and do not require any interference from this Court.

As no substantial question of law arises in the present regular second appeal, therefore, the same is dismissed.

March 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE