

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4625 of 2014 (O&M)
Date of Decision: June 30, 2015

Kurda Ram

...Appellant

Versus

Municipal Council, Narnaul and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.P.Sharma, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Kurda Ram has filed this regular second appeal against Municipal Council, Narnaul, Executive Officer, Kishan Lal, Bhajan Lal, Sajan Singh and Smt.Anari respondents-defendants challenging the impugned judgment and decree dated 16.09.2010 passed by learned Addl. Civil Judge (Senior Division) Narnaul vide which the suit filed by the plaintiff-appellant for possession was dismissed and also the judgment and decree dated 14.07.2014 passed by learned Addl. District Judge, Narnaul vide which the appeal filed by the appellant was dismissed.

The brief facts of the case are that plaintiff-appellant Kurda Ram filed a suit against respondents-defendants Municipal Council, Narnaul and others for possession stating therein that Nathu and Gumani left a joint passage for their personal use to approach to their

houses and no other person had got any concern with the said passage. It is pleaded that after death of Nathu and grand father of plaintiff-appellant, the passage is being used by defendants No.3 to 6 and plaintiff. The defendants in collusion with the officials of Municipal Council, started creating evidence showing the said portion as common passage. It is further alleged that defendant No.6 executed a forged sale deed dated 11.12.2001 in favour of defendant No.5 showing the disputed portion as a common passage and defendants also opened door illegally and forcibly towards the portion owned and possessed by plaintiff. It is also pleaded that defendants No.3 to 6 in collusion with official defendants also got constructed a road illegally and forcibly in the joint passage and sahan owned by plaintiff.

On the other hand, the case of the defendants No.3 to 6 in their written statement is that site plan of plaintiff is not correct. They also denied the joint passage of Nathu and Gumani alone. They stated about the existence of public street and Municipal Council road and drains, which are being repaired by Municipal Council from time to time. It is also stated that portion shown with red colour was part of nazul land which earlier vested in Government and now the same vests in Municipal Council. It is further stated that gate of house of Sajjan Singh opens on the road which has not been shown by the plaintiff in the site plan.

Both the parties led evidence and after going through the evidence, learned Addl. Civil Judge (Senior Division) Narnaul, dismissed the suit vide judgment and decree dated 16.09.2010.

Appellant-plaintiff filed appeal before learned District Judge, Narnaul and learned Addl. District Judge, Narnaul also dismissed the appeal vide judgment and decree dated 14.07.2014.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that both the Courts below have given concurrent findings of fact against the plaintiff-appellant. Nothing has been shown as to how the findings given by the Courts below are incorrect and not as per law. Nothing has been argued at the time of preliminary hearing as to what substantial question of law arises in the present regular second appeal. Learned Addl. District Judge, Narnaul by appreciating the evidence reached to the conclusion that there is no substantive evidence to establish that as to how and by which document the joint passage was left by the previous owners at any point of time for their joint use. There is evidence on record that road has already been constructed. There is nothing on the record as to why the plaintiff-appellant has not raised any objection at the time of construction of the road and how the road has been constructed and under what circumstances. It is also in the evidence that the previous suit instituted by the plaintiff was dismissed as withdrawn without permission of Court, although the plaintiff-appellant has claimed that previous suit was withdrawn due to non-joinder of parties. The grievance of the plaintiff in the previous suit is

that the respondents-defendants are adamant to open door or gate towards disputed property, for which suit for permanent injunction was filed and appellant-plaintiff has claimed the disputed property as his sahan, whereas in the present case, the plaintiff-appellant has claimed that road has been constructed by the respondents-defendants in the site plan in collusion with each other.

The findings of both the Courts below are correct and as per law. At the time of arguments, learned counsel for the appellant argued that the disputed passage is exclusively owned by the appellant but even the pleading of the plaintiff shows that he himself stated that defendants No.3 to 6 are also using the passage. Otherwise also, if it is used only by the plaintiff and it is his personal property, then how the road has been constructed by the Municipal Council for him alone.

Keeping in view the evidence on record, I find that the findings given by the Courts below are correct, as per law and evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

June 30, 2015
Vgulati

(INDERJIT SINGH)
JUDGE