

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1932 of 1987 (O&M)

Date of Decision : 24.05.2016

Ram Nath and others

....Appellants

Versus

Brij Mohan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Mittal, Advocate
for the appellants.

None for respondents.

Surinder Gupta, J.

This is regular second appeal against judgment dated 04.12.1985 passed by then Senior Sub Judge, Narnaul, decreeing the suit of plaintiff as follows:-

“32. In view of my above detailed discussion and for the foregoing reasons, the suit of the plaintiffs against the defendants is decreed with cost directing specifically defendant no. 1 to remove illegally constructed room on portion shown by point 'A' and by words ABCH in red colour in site plan Ex. PW-2/A bounded as follows:-

East : Latrine and chabutra of the plaintiffs;

West : Gali;

North : Gali and illegal construction mark CE; and

South : House owned & possessed by the plaintiff

situated in Mohalla Raoka, Narnaul and to restore the same as vacant space. Defendant no. 1 is also directed to remove illegal construction on public thoroughfare shown by point 'B' in yellow colour and by words AGFDAHC in site plan Ex. PW-2/A, bounded as

follows:-

*East : Rasta and illegal construction CD;
West : House of defendants;
North : House of defendants; and
South : Chabutra of plaintiffs point 'A' in red colour
shown by words ABCH.*

*situated in Mohalla Raoka Tehsil-Narnaul and to
restore the public thoroughfare in its original condition
as public thoroughfare. All the defendants are further
directed not to interfere in the use of the plaintiffs over
these two disputed pieces and also further directed not
to raise any sort of further construction on these two
disputed pieces of land. The defendants are also directed
to remove these illegal construction within two months
from today..... ”*

2. The above observations of learned Senior Sub Judge, Narnaul were affirmed in appeal by Ist Appellate Court.

3. Plaintiff-Tara Chand (since deceased now represented by his legal heirs) filed suit seeking the relief of injunction for direction to defendants to remove illegally constructed room on *chabutra* 'ABCH' shown in red colour at point 'A' in site plan Ex. PW-2/A owned by them and to restore the same in its original shape as *chabutra*. They also sought direction to defendants not to raise further construction over this room and to restrain them from interfering in ownership and possession of plaintiff over the *chabutra*. Plaintiff sought further direction to defendants to remove illegal construction in the street 'AGFDAHC' shown with yellow colour in site plan Ex. PW-2/A at point 'B' and restore the same in its original condition.

4. Plaintiff alleged that he purchased house no. 130 from Revenue Department in an open auction vide sale certificate no. 561 dated 05.02.1965 (Ex. PW-4/3). Between the passage and street at point 'B' shown with yellow colour in the site plan, there is *chabutra* (platform) 'ABCH' at point 'A', which was owned and possessed by him. Defendants demolished the projection over the *chabutra* raised by plaintiff despite issuing of the injunction order and converted this *chabutra* into a room in an illegal and forcible manner. On the west side of this platform there is another *chabutra* and latrine with which defendants have no concern whatsoever. The construction raised by defendants caused obstruction in the use of *chabutra*, *gali* and passage. They were bent upon to raise further construction resulting in filing of the suit.

5. Defendants in their written statement denied the existence of any *chabutra* at the spot or that plaintiff has purchased any such *chabutra*. Defendants alleged that there exists municipal drain from eastern wall of the house of defendants to northern wall of the house of plaintiff. About 20-25 years ago, the height of their eastern wall was 3" where a *chhappar* of defendants existed and they used to tether their cattle. They raised construction of *pucca* room at the spot. The above facts have been concealed by plaintiff and he is not entitled to the relief of injunction.

6. On appraisal of evidence, learned Senior Sub Judge observed in para 14 regarding the plea of plaintiff that he owns two *chabutras* (platforms) as follows:-

“14. Thus, taking into consideration the entire evidence of the plaintiff, it is not established as if there were two Chabutras shown by point 'A' Gali point 'B' and Rasta

show in site plan Ex. PW-2/A in the North of the house of the plaintiff. These boundaries also do not tally with the boundaries given in the sale certificate, Ex. PW-4/3.”

7. Regarding the existence of street, learned Senior Sub Judge observed in para 24 as follows:-

“24. Admittedly, line plan Ex. C-1 is of the property of the defendants and C-3, line plan of the house of the plaintiff. Even the bare perusal of line plan Ex. C-3, of the house of the plaintiff shows that there did not exist any chabutra upto the western wall of the house of the plaintiff as is now alleged by the plaintiff. From the perusal of the site line plan Ex. C-1, the ld. counsel for the plaintiff wanted to say that there is 3½' wide gali between the suit properties. If it is minutely perused, it shows that in that case there was vacant space between the alleged Gali and property No. 130 of the plaintiff and that Gali is shown as proposed Gali. The site plan Ex. C-1 at least makes me believes that there is 8' distance between the properties of plaintiff No. 130 and of the defendants 130/1. Towards North of the house of the defendants there is proposed Gali of 3½' width and then toward its South 4½' vacant space upto the house of the plaintiff.”

8. In view of above observations, learned Senior Sub Judge concluded in para 26 as follows:-

“26. In view of my above detailed discussion and for the

foregoing reasons and relying upon the boundary of property no. 130 given in sale certificate Ex. PW-4/3 which shows that there is Gali and property No. 130/1 in the North of property No. 130 and also relying upon line plan Ex. C-1 of the property No. 130/1 of the defendants, and also relying upon the Northern boundary of line plan Ex. C-3 of property No. 130, I hold and decide that the alleged Chabutra shown by point 'A' in red colour in site plan Ex. PW-2/A is not the part of the house No. 130 purchased by the plaintiff vide sale certificate dated 5.2.65, Ex. PW-4/3, similarly the property shown as Gali by point 'B' in yellow colour in site plan Ex. PW-2/A is a public thoroughfare and both sites in dispute have been illegally encroached upon by the defendants by way of raising construction as is alleged by the plaintiff. Hence issues no. 3 & 4 are decided in favour of the plaintiff and against the defendants and issue no. 2 in favour of the defendants and against the plaintiff.”

9. Not satisfied, defendants-appellants preferred appeal wherein learned Ist Appellate Court observed that keeping in view the total area of plot purchased by plaintiff and the boundaries depicted in documents i.e. conveyance deed (Ex. PW-4/3) coupled with plan sketched in valuation statement (Ex. C-2), it was evident that site of *chabutras* did not form part of the property of plaintiff. It further observed that area of the plot No. 130/1 purchased by defendants was 67 sq. ft. and the disputed site of *chabutras* and lane were definitely not a part of the site of plot no. 130/1.

10. Learned counsel for appellants has argued that plaintiff claimed site of *chabutras* and street as part of their property but failed to prove the same. Learned trial Court and Ist Appellate Court instead of dismissing their suit decreed the same with direction to defendants to remove the construction holding the disputed site as public street/passage. Both the courts below have travelled beyond the pleadings while recording the above findings.

11. The dispute in this case was as to whether plaintiff is owner of the disputed *chabutras* or defendants are owners of the disputed *chabutras*. On appraisal of evidence, both the Courts below have recorded finding that the property in dispute is neither owned by plaintiff nor by defendants but is part of public passage/street. While recording this finding, the Courts below have not travelled beyond scope of the suit. Learned counsel for appellants during course of arguments has not been able to point out that findings of the Courts below are based on misreading of evidence on record. It was abundant duty of Court to record finding as to who owns the disputed site. Once the Court reaches the conclusion that it was public site, being custodian of public property, it has committed no error while directing the defendants to remove the encroachment and vacate public passage for public use. Consequently, I find no reason to reappraise the evidence and to interfere with the concurrent findings of the Courts below.

13. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

May 24, 2016

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No