

ESA No.193 of 2016(O&M)

In the High Court of Punjab and Haryana at Chandigarh

ESA No.193 of 2016(O&M)

Date of Decision: 11.7.2016

Charanjit Kaur

---Appellant

versus

Chand Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Jatinder Singla, Advocate
for the appellant**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against order dated 2.4.2016 passed by the Additional District Judge, Bathinda whereby the appeal preferred against order dated 2.9.2014 passed by the Additional Civil

Judge (Senior Division), Phul (hereinafter referred to as “the Executing Court”) dismissing the objections, the application under Order 1 Rule 10 of the Code of Civil Procedure (in short “CPC”) and another application for stay, has been dismissed.

Counsel for the appellant would contend that Chand Singh respondent was owner of khasra No. 720/76 measuring 26 kanals 3 marlas. A sale deed bearing No. 9343 dated 19.5.1970 in respect of land measuring 24 kanals 9 marlas out of aforesaid khasra number was executed by Chand Singh in favour of Provincial Government, Punjab. Out of land measuring 1 kanal 12 marlas left with Chand Singh, he executed a sale deed in respect of 6 marlas of land in favour of the appellant vide sale deed No. 1677 dated 7.6.2000. Out of that 6 marlas of area, the appellant sold 2 marlas in favour of Urmila Devi.

Chand Singh filed a civil suit for possession in respect of land measuring 16 marlas against Principal Secretary Irrigation Department, Punjab and others that came to be dismissed by the trial court (Addl. Civil Judge (Senior Division) Phul) vide judgment and decree dated 21.8.2004. However, the appeal preferred by Chand Singh against the said judgment and decree was allowed by the Additional District Judge, Bathinda vide

judgment and decree dated 15.12.2004. Chand Singh filed an application for execution of the decree passed by the Court of Appeal wherein the present appellant filed an objection petition, application under Order 1 Rule 10 CPC and another application for stay that came to be disposed of by the Executing Court vide common order dated 2.9.2014. The order passed by the Executing Court was affirmed in appeal by the District Judge, Bathinda.

Counsel for the appellant would contend that in the objection petition filed by the appellant, a specific plea was raised that land in regard whereof Chand Singh has obtained a decree is a public passage, therefore, the respondent (decree holder) has no right to block the passage, used by the appellant and other residents of the area. It is further submitted that adjoining to the passage in question, as clearly depicted in the site plan (Annexure P-4) and the photographs (Annexure P-8(colly)), there is a drain that belongs to the State Government. It is further argued that there can be no drain without a berm, used as a passage, therefore, the Courts below have committed a serious error rather illegality in dismissing the objection petition and that too without framing of issues and providing opportunity to adduce evidence. The last submission made by counsel is that in case the respondent/decree holder is successful in raising a wall at point A -B

depicted in the site plan (Annexure P-4), right of the appellant to have an access to the main road from Bajakhana to Bhagta Bhai Ka through passage in question would be blocked.

I have heard counsel for the appellant, perused the paper book and the various annexures appended with the appeal.

In the objection petition preferred by the appellant, she has raised inconsistent and contradictory pleas with regard to status of the alleged passage/street, sufficient to indicate that neither the appellant is sure about status of the said area nor about her rights therein. In para 3, it has been averred to be a street/public street meant for the applicant/decreed holder/persons of the locality and the public at large with the additional averments that if private property of a person is used as a public street, it will be treated as such. In para 4, the plea is that the passage in question is also a private passage of the applicant as it was provided by the decreed holder vide sale deed dated 7.6.2000. In the succeeding para No. 5, a right of easement qua the passage in question has been claimed but without a whisper if the said right is an easement of necessity or by way of prescription.

A perusal of copy of the sale deed placed on record would

make it evident that it does not make reference to area, dimension or boundary of rasta gair mumkin. There is nothing on record suggestive of the fact that alongwith the sale deed, any site plan was appended. Under the circumstances, the appellant cannot claim any right in the property in question on the basis of sale deed dated 7.6.2000 disregarding the fact that she has already sold 2 marlas out of 6 marlas purchased by her.

As has been noticed hereinbefore, there is not even a whisper in the petition as to whether the appellant claims easement of necessity or that of prescription. Even no such arguments have been advanced by counsel for the appellant that the alleged rasta is the only area for the purpose of ingress and outgress to house of the appellant. Admittedly, no other resident of the area whose properties are shown to be falling on the alleged rasta, shown in yellow colour in the site plan, had approached the Court for claiming any right in the area qua which the decree has been passed in favour of the respondent. That creates a serious doubt in the claim of the appellant. The appellant for the reasons best known has not given the dimensions and boundaries of the so called rasta/public street in the objection petition preferred by her. This apart, grievance of the appellant that in case the respondent raises construction of a wall at point A – B

depicted in the site plan, the same would result in depriving the appellant to approach the main road from bus stand Bhagta Bhai Ka to Bajakhana through the alleged rasta, no decree was passed in favour of the respondent permitting him to raise construction of a wall. Any grievance of the appellant against raising of construction of a wall by the respondent at point A -B cannot be the subject matter of execution of the decree for possession in regard to area measuring 16 marlas. Conversely, if the appellant has any grievance to express against construction of a wall by the respondent, she may, if so advised, take recourse to appropriate proceedings, in accordance with law.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

11.7.2016

PARAMJIT