

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

**RSA No.2601 of 2010 (O&M)
Decided on: 06.04.2016**

Jagir Singh
Nasib Singh and another

Versus

....Appellant
....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Surinder Mohan Sharma, Advocate
for the appellant.

Mr. Arvind Singh, Advocate
for the respondents.

REKHA MITTAL, J.

The present appeal has been directed against the judgment and decree dated 22.03.2010 passed by the Appellate Court, partly allowing the appeal of the respondents/defendants in regard to land Marked ABCDEF in red colour in the site plan (Ex.P-1) described as *Sehan* of house of the plaintiff/appellant.

Jagir Singh-appellant filed the suit for claiming relief of permanent injunction restraining the respondents/defendants from interfering, encroaching upon land marked ABCDEF situated in the *abadi* of village Mahua Kheri, described in detail in para 1 of the judgment passed by the trial Court. He also claimed mandatory injunction directing the defendants to remove *toka* machine and pegs in the common passage/land shown as ABFGHI and depicted in green colour in the site plan.

The learned trial Court, on consideration of pleadings of the parties, issues framed for determination, evidence adduced on

record and the rival submissions made by counsel for the parties, decreed the suit both in regard to relief of permanent and mandatory injunction vide judgment and decree dated 09.05.2008.

The judgment and decree passed by the learned trial Court became subject-matter of appeal and the Appellate Court partly allowed the appeal, relied upon the report of the Local Commissioner i.e. site plan prepared by the Draftsman in order to hold in the following terms:-

".....the Local Commissioner who had been appointed by this Court was the Naib Tehsildar of the area who had visited the site along with a draftsman who had also been appointed by the Court. The site plan was prepared by the draftsman as per the spot. A perusal of site plan filed by the Local Commissioner shows that the land shown as ABCDE by the respondent/plaintiff is not the Sehan of the respondent/plaintiff but is a vacant land. The passage has also been shown in the site plan and the toka machine and pegs have also been shown. A perusal of the site plan makes it clear that both parties are trying to encroach upon the common land and the passage. The respondent/plaintiff projected the vacant land as his own Sehan whereas actually it is not."

Counsel for the appellant has submitted that the Appellate Court has committed a gross error rather misdirected itself on account of its failure to understand what does the 'Sehan' means. It is argued that it was never case of the appellant that the area marked as ABCDE in site plan (Ex.P-1) has any boundary-wall much less construction thereon. On the contrary, plea of the appellant is that the said area is the courtyard of his house and his house abuts the said courtyard on its

southern side duly reflected in the site plan. In addition, it is submitted that the Court has merely relied upon the site plan prepared by the Local Commissioner to record its findings without advertent to statements of various witnesses examined by the parties to support their respective contentions with regard to ownership of the area Marked ABCDE. Another submission made by counsel is that the site plan prepared by the Local Commissioner exactly tally with the site plan (Ex.P-1) proved by the appellant. The Court in appeal has further not adverted to the findings of the learned trial Court whereby claim of the appellant *qua* grant of permanent injunction had also been accepted in respect of area Marked ABCDE.

Counsel for the respondent, on the contrary, has supported the judgment passed by the Appellate Court with the submissions that as the area Marked ABCDE is a vacant land within the *abadi deh* of village Mahua Kheri, the same would be ownership of Gram Panchayat of the village in view of definition of *shamlat deh* defined in Section 2(g) of the Punjab Village Common Lands Regulation, 1961 (applicable to the State of Haryana) (in short 'the Act') as the same would fall within the purview of Section 2(g) (4) (a) of the Act. It is further argued that the appellant failed to produce any documentary evidence to substantiate his plea in regard to his ownership of land Marked ABCDE in the site plan (Ex.P-1), therefore, the findings recorded by the learned trial Court allowing permanent injunction against interference in the land in question have been rightly set-aside by the Appellate Court.

I have heard counsel for the parties, perused the paperbook

and the records of the Courts below.

It is pertinent to mention at the outset that the present appeal pertains to land Marked ABCDE in the site plan (Ex.P-1) *qua* which the appellant claimed relief of permanent injunction restraining the defendants from interfering in the said land as he claim himself to be owner thereof being a *Sehan*/courtyard of his house admittedly abutting the land in question on its southern side.

The learned trial Court while dealing with Issue No.1 '*Whether plaintiff is entitled for the relief of permanent injunction on the ground alleged*' has dealt in detail the alleged encroachment/interference in the common passage by installation of a *toka* machine and 2-3 pegs/*khuntas* installed by the defendants/respondents. It was further held that the plaintiff being one of the inhabitants of the village has a right to file a suit against the defendants seeking thereby a decree for permanent injunction against the defendants who has not only installed the *toka* machine and pegs in the common passage and common land of the village in an illegal manner but have also extended a threat to dispossess the plaintiff from his own property and wanted to encroach upon the *Sehan* area of the house of the plaintiff. Except the last two lines with regard to extending threat to dispossess the plaintiff from his property and encroach upon the *Sehan* area, there is no discussion or reference to evidence on record and as to how claim of the appellant/plaintiff *qua* ownership of the area depicted as *Sehan* is sustainable. In this view of the matter, it can be safely held that the learned trial Court being the Court at grassroot level

to decide the factual controversy did not discharge its duty. The First Appellate Court, in place of rectifying the error committed by the trial Court or remitting the matter to the trial Court for recording specific findings *qua* claim of the appellant in regard to ownership or possession of land described as *Sehan* perpetuated the wrong by deciding the appeal merely on the basis of a site plan prepared by Sh. Atul Sharma, Draftsman appointed to accompany the Local Commissioner i.e. *Naib Tehsildar* who was directed to visit the site along with a Draftsman. It appears that there was no report submitted by the *Naib Tehsildar* under his signatures in compliance with order dated 08.10.2010 passed by the Appellate Court and the report was submitted only by Sh. Atul Sharma, Draftsman and that too pertains to preparation of a site plan after taking measurement of the property in question depicting the existing condition at the site. The said site plan even does not bear the signatures of *Naib Tehsildar*. The Appellate Court neither adverted to the evidence adduced by the parties nor the findings recorded by the learned trial Court and simply held the site in question to be a common land dis-regarding the fact that a site plan itself cannot form the basis to record a finding *qua* ownership of the land in question more particularly in the circumstances that it was never be the plea of any of the parties that the said land is a common land or belongs to the Gram Panchayat of the village in the light of definition of *shamlat deh*, given in the Act.

The controversy with regard to a factual dispute is firstly required to be decided by the trial Court and the First Appellate Court is

competent to reappraise and re-appreciate the entire evidence to decide if the findings recorded by the trial Court are correct or otherwise. In the case at hand, neither the trial Court nor the Appellate Court has addressed the said factual controversy, therefore, there is no option except to set-aside the judgments passed by the Courts below and remit the matter to the trial Court for decision afresh in regard to claim of the appellant that he is owner of land in question described as *Sehan* and marked as ABCDE in the site plan (Ex.P-1). The trial Court would be entitle to take into consideration the site plan prepared by the Draftsman besides other materials on record, to decide the said question.

In view of what has been discussed hereinabove, the appeal stands disposed of in the aforesaid terms. The matter is remitted to the learned trial Court for decision of the case afresh only *qua* portion of the land described as *Sehan* (ABCDE) in the site plan (Ex.P-1). It is further clarified that none of the parties would be entitled to agitate the issue *qua* land described as a common passage in regard whereof, claim of the appellant for grant of mandatory injunction was allowed by the trial Court, affirmed in appeal and has not been further challenged before this Court by either of the parties.

06.04.2016
yakub

(REKHA MITTAL)
JUDGE