

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

RSA No.1831 of 2011(O&M)

Date of decision:30.3.2016

Ramesh Chand Sharma and others

....Appellants

VERSUS

Bhuru Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Gaurav Mohunta, Advocate for the appellants.

Mr. Ramandeep Singh, Advocate for respondent No.1.

REKHA MITTAL, J.

The appellants have approached this Court to express their grievance against the findings recorded by the Courts below whereby suit filed by the plaintiffs/appellants was dismissed on 14.05.2009 and the appeal preferred by the appellants did not find favour with the Additional District Judge, Panchkula, and as a consequence, findings recorded by the learned trial Court have been affirmed on 08.02.2011.

The bone of contention, in the present litigation, is the alleged encroachment of a common passage or gali share-aam marked as ABCD depicted in red colour in the site plan attached with the plaint on the premise that Bhuru Ram – respondent No.1 is required to be restrained from putting the shuttering and mud in the aforesaid common passage.

Further prayer has been made to restrain the respondent from blocking the

passage for ingress and outgress of the plaintiffs, their family members and inhabitants of the locality. Another prayer has been made for issuance of directions to respondents No.2 and 3 to remove the encroachment made by respondent No.1. It has been averred that the common passage always remained dirty as all the dirty water coming from houses of the inhabitants in the drainage has stranded due to blockage put by respondent No.1, thus, creating a foul smell and is a source of continuous nuisance.

Bhuru Ram - respondent No.1 filed the written statement, challenged locus standi of the plaintiffs to file the suit, raised the plea of non-maintainability of the suit and claim of the plaintiffs being barred by rule of estoppel. It is averred that the appellants concealed material facts and have not disclosed the true facts. He is owner and in lawful possession of the suit property i.e. Chabutra, open space in front of his house marked ABCD as same is part and parcel of his house and no encroachment has been made by him upon common passage or gali share-aam.

In the year 1992, Sarpanch of the Gram Panchayat, Pinjore and others tried to interfere in the house of the answering defendant and open space in front of his house. The Gram Panchayat filed a petition under Section 7 of the Punjab Village Common Lands Act, 1961 before Assistant Collector Ist Grade, Kalka, but the same was dismissed vide order dated 10.06.1993. At that time, the Gram Panchayat along with plaintiffs No.1 and 2 threatened to interfere in possession and enjoyment of the suit property and demolish the Chabutra, part and parcel of his house. He filed a suit for injunction against the said persons and attached a site plan along with the plaint. Vide order dated 13.11.1992, the Court directed

the parties to maintain status quo as regard possession and demolition of the suit property and the order passed by the trial Court was affirmed in appeal vide order dated 18.01.1995. Thereafter, he filed Civil Suit No.25 of 1992 against the Gram Panchayat and plaintiffs No.1 and 2. It was decreed by the Civil Judge (Senior Division), Panchkula vide order dated 27.01.1997 to the extent that the plaintiffs are restrained from demolishing Chabutra (suit property) or dispossessing the answering defendant except in due course of law. The plaintiffs have not disclosed the aforesaid litigation, concealed the true and material facts, therefore, they are not entitled to equitable and discretionary relief of injunction.

Defendants No.2 and 3 filed a joint written statement; admitted claim of the plaintiffs to the extent that defendant No.1 has encroached the common passage or gali share-aam and blocked the same by putting shuttering materials, mud and stones etc.

The plaintiffs preferred replication to the written statement filed by respondent No.1, reiterated their stand taken in the plaint and controverted the allegations set up in the written statement.

The learned trial Court framed the following issues for determination:-

1. Whether plaintiffs are entitled for permanent injunction as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Relief.

The parties were permitted to adduce evidence in support of their respective pleas. After having heard counsel for the parties and

bestowing its thoughtful consideration to the materials on record, the learned trial Court determined issue No.1 against the plaintiffs and as a result, the suit was dismissed leaving the parties to bear their own costs. As has been noticed hereinbefore, the appeal preferred by the unsuccessful plaintiffs was dismissed on 08.02.2011.

The substantial question of law that arises for adjudication is “whether the property subject matter of the present suit is the same as was in dispute in the earlier litigation initiated by respondent No.1 titled Bhuru Ram Vs. Gram Panchayat and others, in which the plaintiffs Ramesh Chand and Hari Ram were arrayed as defendants No.4 and 6? If so its effect?”

Counsel for the appellants would submit that in the earlier litigation initiated in the year 1992 by filing Civil Suit No.25 of 1992 at the instance of respondent No.1, the respondent sought injunction against demolition of a Chabutra of his house and the said Chabutra was a projection of his house protruding towards the gali share-aam. It is argued with vehemence that as in the present suit, the appellants have sought injunction qua encroachment/blockage on the surface of the gali in dispute, neither the respondent can take any advantage of the findings recorded in the earlier suit nor he can be heard to say that the appellants have concealed any material facts disentitling them to the discretionary and equitable relief of injunction much less those findings constituting res judicata as has been held by the Courts below more particularly in the circumstances that the pleadings in the said suit are not a part of the present suit. Another submission made by counsel is that the local commissioner

appointed by the Court has clearly shown in his report (Ex.P3) that respondent No.1 has encroached the passage, an area approximately 3 feet by placing the shuttering material, stones etc and thus blocking the drain passing in front of his house for discharging the dirty water etc. from the houses of the inhabitants in the said gali. In addition, it is argued that blockage of the gali by placing the aforesaid material is clearly depicted in the photographs (Ex.P6 and P8), the correctness whereof was admitted by the respondent in his cross-examination.

The last submission made by counsel is that the respondent being a member of civilized society should not be allowed to create nuisance for inhabitants of the area by blocking the drain passing in front of his house resulting in over-flowing of the dirty water, causing foul smell and a source of nuisance.

Counsel for the contesting respondent, on the contrary, has submitted that the present lis pertains to the same subject matter that stands determined in favour of the respondent in view of the earlier litigation between the parties. It is further submitted that the defendants in the said suit were restrained to demolish the Chabutra of the plaintiffs shown in red colour in the attached site plan or to dispossess him except in due course of law. According to counsel, the area in dispute was earlier within the jurisdiction of the Gram Panchayat of village Pinjore but the same has now become a part of Municipal Area, therefore, respondents No.2 and 3 cannot initiate any action against respondent No.1 except by taking recourse to legal process, in accordance with law.

I have heard counsel for the parties, perused the paper-book and the original records.

The plea of the appellants that the earlier suit pertains to a projection of the house of the respondent hanging over a portion of the gali share-aam is mis-conceived and merits outright rejection. In para 2 of the judgment dated 27.01.1997 passed in Civil Suit No.25 of 1992 instituted by respondent No.1, the property has been described as Chabutra shown in red colour in the attached site plan stated to be part and parcel of house of the plaintiff. It is further averred that he is using it from the very beginning and his well is also in this Chabutra. There is a gali 10 feet wide in front of his house coming from one side and leading towards the crossing (Chauraha). The site plan appended with the said suit and marked as Ex.P1 is Ex.D3. A conjoint and plain reading of documents (Ex.D1 to Ex.D3) leaves no manner of doubt that the Chabutra in dispute in the earlier litigation is the property adjoining the gali in question which was stated to be 10 feet wide and passing in front of the house of defendant No.1. A careful comparison of the site plan (Ex.D3) with the site plan (Ex.P4) appended with the plaint in the present suit and the site plan prepared by the local commissioner, it becomes an undisputed position that the subject matter of the earlier suit and that of the present one is the same, thus, the plaintiffs are guilty of concealing the factum of earlier litigation and the decision in favour of the respondent/defendant.

The Courts below have refused to rely upon the report of the local commissioner with the observations that the local commissioner exceeded his jurisdiction and made a report beyond the scope of his

appointment. Nevertheless, the local commissioner has also shown width of the pucci gali to the extent of 10 feet and the width of the said gali to be 13 feet in front of house of the defendant. It has nowhere been mentioned by the local commissioner that width of the gali in dispute has been reduced because of respondents' placing the shuttering material or stones etc. in the gali. The plaintiffs in the plaint have not described width of the gali in question, may be, for the reason that they knew it well that the portion on which the respondent has placed the shuttering material is a part of Chabutra subject matter of the earlier litigation and the same is not a part of the pucci gali.

Once the appellants have failed to lead any cogent and convincing evidence regarding width of the gali in question and further to prove that the respondent has encroached upon a part of the gali by placing the shuttering material though there is no evidence with regard to placing any mud in the gali either in view of report of the local commissioner or in the photographs (Ex.P6 and P8), I find myself unable to differ with the findings recorded by the Courts below.

This apart, as subject matter of the present suit is the same as that of the previous one filed by the defendant in which decree for injunction was passed in his favour restraining demolition of the Chabutra except in due course of law, I find myself unable to subscribe to the contention of the appellants or interfere in the well considered judgments recorded by the Courts below.

To be fair to the appellants, counsel has raised a submission that the findings of the Courts below in regard to the suit being barred by

res judicata are not sustainable for want of proving the pleadings of the earlier suit. Even if contention of the appellants in this regard is accepted, it would not enure to their benefit to seek reversal of the judgments passed by the Courts.

As an upshot of the discussion made hereinbefore, the aforesaid question is answered against the appellants and in favour of contesting respondent- Bhuru Ram.

For the foregoing reasons, the appeal sans merit and is accordingly dismissed. No order as to costs.

MARCH 30, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE