

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

**R.S.A No.1004 of 2012 (O&M)
Date of decision: 28.03.2016**

Punnu Ram

..... Appellant

Versus

Kashmir Singh and others

..... Respondents

AND

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..... Appellant

Versus

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..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Jagdish Manchanda, Advocate
for the appellant.

DARSHAN SINGH,J

This judgment of mine shall dispose of both the Regular
Second Appeals mentioned above as both these appeals have arisen out of
the same judgment dated 12.05.2010 passed by the learned Additional

District Judge, Karnal, whereby the appeal filed against the judgment and decree dated 31.03.2009 passed by the learned Additional Civil Judge (Sr. Division) has been allowed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent no.1-Kashmir Singh has filed the suit for permanent injunction restraining defendant no.1-Harbhajan Singh (now deceased) from blocking the road, flow of water and access to his house from the gate fixed on the rear side of his house no. 496, New Prem Nagar, Karnal. Further relief has been sought restraining defendant no.1 from raising construction on the rear wall of the house of the plaintiff.

4. As per averments of the plaint, the plaintiff is owner in possession of house no. 496, New Prem Nagar, Karnal, vide sale deed no. 3958 dated 17.01.1974. He raised the construction of the plot after getting the site plan sanctioned from the office of Municipal Council, Karnal. There were two roads i.e. one in front of his house and other on the rear side of the house. The same were being used by the residents of the locality and were maintained by the Municipal Council, Karnal being the owner. The flow of waste water from the house of the plaintiff was from front side to the backside. Defendant no.1-Harbhajan Singh, who is neither owner nor in possession of the Kacha road, but wants to grab the land. He wants to close the gate of the plaintiff and to block the flow of the water. Hence, the suit.

5. Defendant no.1 contested the suit on the grounds *inter alia*

that there was no Kacha road on the rear side of the house of the plaintiff as shown in the site plan. Rather, there was the plot over which defendant no.4-appellant Punnu Ram has already raised the construction up to plinth level and he had agreed to sell the said plot to him vide agreement to sell dated 03.06.2000. Punnu Ram was the owner of the said land as he has purchased it from the Custodian Department in the year 1972 and prior to that it was agriculture land. Later on, residential plots were carved out and the same stood converted into Abadi. It was further pleaded that earlier Gurnam Singh had instituted the civil suit no. 527 of 1981 titled as 'Gurnam Singh Versus Parkash Chand' claiming the existence of the road on the western side, but the said suit was dismissed. Plaintiff had himself instituted civil suit no. 680 of 14.12.1989 titled as 'Sadhu Singh and others Vs. Punnu Lal' and the said suit was also dismissed. It was pleaded that the present suit is barred by principle of *res judicata*. It was further pleaded that the Kanungo was appointed as Local Commissioner to demarcate the land and report about the Kacha road. The Local Commissioner has reported that 4 Biswas of land belonging to Punnu Ram was short and the same was in possession of the adjoining plot holders. It was further pleaded that the land in dispute was not a road, rather the plot forming the part of the property of Punnu Ram-appellant. All other averments in the plaint were controverted.

6. Defendant no.2-Municipal Council, Karnal also filed the written statement pleading therein that the road on the eastern side and Bandh-road on the western side vests in the Municipal Council. It was further pleaded that as per lay out plan, there were 40 feet wide road on

the eastern side and 30 feet wide Bandh on the western side, which was being used as road by the public. The remaining averments in the plaint were repelled.

7. The appellant has filed the separate written statement taking the similar pleas as raised by defendant no.1.

8. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 17.08.2006:-

1. Whether the plaintiff is entitled to a decree for permanent injunction against the defendants as prayed?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit?OPD
4. Whether the suit is barred by principal of res judicata and the same is barred under Order 2 Rule 2 CPC?OPD
5. Relief.

9. On appreciating the material on record and the contentions raised by learned counsel for the parties, the suit filed by the plaintiff-respondent no.1-Kashmir Singh was dismissed by the learned trial Court.

10. Two appeals were preferred against the judgment and decree dated 31.03.2009 passed by the learned trial Court i.e. one by the plaintiff and other by the Municipal Council, Karnal, which were disposed of by the common judgment dated 12.05.2010, vide which those appeals were allowed. Hence these Regular Second Appeals.

11. I have heard Mr. Jagdish Manchanda, Advocate, learned counsel for the appellant and have meticulously gone through the record of the case.

12. Initiating the arguments, learned counsel for the appellant

contended that there is a categoric findings by the learned trial Court that there does not exist any road/Bandh on the rear side of the house of the plaintiff. The said findings were returned by the learned trial Court on the basis of the reports of the Local Commissioner. He further contended that the site in dispute is not a road, rather it was the plot owned by the appellant, which he had agreed to sell to defendant no.1-Harbhajan Singh (deceased). He contended that it was reported by the Local Commissioner that the portion of the plot owned by the appellant has been encroached upon by the adjoining plot holders.

13. He further contended that earlier also two civil suits i.e. civil suit no. 527 of 1981, titled as 'Gurnam Singh Vs. Parkash Chand' and civil suit no.680 of 14.12.1989, titled as 'Sadhu Singh and others Vs. Punnu Lal', were filed with respect to this very disputed site. But, both these civil suits were dismissed. Plaintiff-Kashmir Singh was also a party to civil suit no. 680/1989. He contended that in those civil suits, it was held that no road exist on the rear side of the house of the plaintiff and other neighbourers and it was the plot owned by Punnu Ram-appellant. He contended that the judgment in civil suit no. 680 of 1989 operates as *res judicata* and the judgment in civil suit no. 527 of 1981 is also the relevant piece of evidence under Section 13 of the Indian Evidence Act, 1872 (for short 'Act'). To support his contentions, he relied upon cases **Mahinder Pal and others Vs. Prem Kumar and others 2005(3) R.C.R (Civil) 828** and **Lal Singh and others Vs. Surjit Kaur 2005(4) R.C.R (Civil) 719**. Thus, he contended that the learned First Appellate Court has wrongly reversed the well reasoned judgment passed by the learned trial

Court.

14. I have duly considered the aforesaid contentions.

15. The dispute in the present suit is as to whether on the western side of the house of the plaintiff, there is Bandh/road or the land owned by appellant-Punnu Ram.

16. Ved Parkash, the son of the appellant has appeared as DW-10. Appellant has also examined DW-11 Sanjha Ram to prove the nature of the land in dispute. This fact is not disputed that in the year 1960, the Rehabilitation Department floated a colony known as New Prem Nagar, consisting of 498 plots. It was also known as 8 Marla colony. The lay out plan of the said colony is mark A. DW-10 Ved Parkash, the son of the appellant has admitted that they have also purchased the plot in that colony bearing no. 297. He further admitted that his father has purchased the land towards western side of this colony in the year 1972 as per the sale certificate Ex.D-1 out of Khasra No. 1351/425 min. It is also an admitted fact that due to earlier dispute with respect to the nature of this land, DW-3 Om Parkash, Sadar Kanungo was appointed to demarcate the land. His report is Ex.DW-3/A. Though in his report Ex.DW3/A, he has mentioned that the area of Bandh had been included in the colony and further alleged that the area measuring 4 Biswas belonging to the appellant has also been taken in the area of the colony. But, he has not prepared any site plan showing the aforesaid encroachment. He has also admitted that at the time of demarcation, he has not taken the copy of the sanctioned site plan/lay out plan of New Prem Nagar Colony from the Rehabilitation Department nor associated any official of that department.

He further admitted that none of the persons having plots on the eastern side of the disputed land were given any notice regarding demarcation. So, the demarcation conducted by DW-3 was at the back of the plot holders of New Prem Nagar Colony. However, one thing is clear from the statement of DW-3 and his report that there was a Bandh on the western side of the New Prem Nagar Colony, which is shown in the site plan of Rehabilitation Department mark A.

17. This fact is not disputed that this colony came into existence somewhere in the year 1960. The lay out plan of the said colony was prepared, which was mark A and has been exhibited by the learned First Appellate Court as Ex.PX. The said site plan shows the existence of the Bandh on the rear side of the plot of the plaintiff. Even, from the demarcation report Ex.DW-3/A, this fact cannot be ruled out that there was a Bandh on the western side of the New Prem Nagar Colony. But, it has been reported that the said Bandh has come in the colony. DW-10 Ved Parkash, the son of the appellant has admitted in the cross-examination that they did not move any application to the Custodian Department for completing the land purchased by them. This non action on their part negates the findings in the demarcation report that the area of Bandh and the land belonging to the appellant was included in the area of New Prem Nagar Colony particularly when DW-3 Om Parkash, the Kanungo has admitted in the cross-examination that he has not conducted the measurement from any Burji of rectangle nor he made the Pucca point from the Canal/Rajwaha and Punnu Ram has fixed the Burjis. It shows that Om Parkash, Kanungo has not conducted the demarcation from any

Pucca point. Such demarcation does not carry any evidentiary value. Moreover, DW-3 Om Parkash has admitted in the cross-examination that at the time of demarcation, he did not know about 30 feet Bandh, which used to exist on the rear side of house nos. 470 to 498. He further admitted that he did not conduct any demarcation of the Bandh. Thus, no fault can be found with the conclusion arrived at by the learned First Appellate Court that there existed a Bandh in between the land purchased by Punnu Ram from the Custodian Department and the New Prem Nagar Colony, which was used to protect the colony from the floods from the adjoining canal.

18. Even though, the said Bandh was not maintained by the Municipal Corporation, that will not become the property of the appellant as the Bandh being part of the canal will vest in the Municipal Council as per the Provisions of Section 61 (1) (b) of the Haryana Municipal Act, 1973. Thus, appellant has no right to block or encroach upon the site in dispute.

19. Learned First Appellate Court has rightly observed that it is the duty of the Court to protect the public property. No doubt, there are certain lapses on the part of Municipal Council, Karnal to properly maintain the record regarding the property in dispute and further to maintain the same. That may be due to various reasons but will not divest the Municipal Council of its property nor the appellant or the person claiming through him will have any right to raise any construction therein.

20. There is no dispute that previously one Gurnam Singh,

owner of the house no. 495 of this Colony has filed the suit claiming the same relief. But, his suit was dismissed vide judgment dated 30.04.1983. The copy of the judgment Ex.DW10/E shows that neither the present plaintiff Kashmir Singh nor the Municipal Council, Karnal was impleaded as a party to that suit. The Rehabilitation Department was also not impleaded as party to that suit. Though, that judgment can be relevant under Section 13 of the Act, but it cannot operate as *res judicata* against the plaintiff as well as the Municipal Council in this case nor the findings returned therein will be binding on the plaintiff and the Municipal Council. The said judgment is only a piece of evidence to be appreciated in the light of other material brought on record. The cases relied upon by learned counsel for the appellants are of no help to him.

21. This fact is also not disputed that the present plaintiff was also a party to the civil suit no. 680 of 1989, but that suit was dismissed in default under Order 9 Rule 2 CPC. Thus, the fresh suit on the same cause of action was not barred. So, the order dated 14.09.1992, vide which the civil suit no. 680 of 1989 was dismissed in default will also not bar the present suit.

22. Thus, I have no reason to differ with the well reasoned findings recorded by the learned First Appellate Court.

23. Consequently, the present appeals having no merits, are hereby dismissed with no orders as to costs.

March 28, 2016

s.khan

(DARSHAN SINGH)
JUDGE