

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

**R.S.A No.3980 of 2011 (O&M)
Date of decision :03.11.2016**

Joginder Pal and others

..... Appellants

Versus

Joginder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sarwan Singh, Sr. Advocate
with Mr. N.S.Rapri, Advocate
for the appellants.

Ms. Munisha Gandhi, Sr. Advocate
with Ms. Salina Chalana, Advocate
for the respondents.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 04.03.2011 passed by the learned District Judge, Kapurthala, whereby the appeal filed by appellants-plaintiffs against the judgment and decree dated 27.01.2009 passed by the learned Civil Judge (Jr. Division), Phagwara, has been dismissed.

2. Plaintiffs have filed the suit for permanent injunction restraining the defendant-respondents or anybody else on their behalf from closing the ventilators, door and windows of the building of plaintiffs which opens towards southern side in the passage and further restraining the defendant from raising any obstacle to the plaintiffs to the use of the said passage situated on the southern side of his house or from cultivating the said space.

3. As per averments in the plaint, plaintiff no.2 purchased the land measuring 01 kanal 01 marla out of khasra nos. 30(5-8) 4743/31(3-2), situated at Phagwara Sarki, Phagwara with specific boundaries i.e. East: road, West: land of defendant, North: property of Raja, South: passage. In the shape of plot measuring north/south 57 feet, east/west 64 feet from defendant vide registered sale deed dated 15.03.1980 and thereafter, he raised the construction of the building over the said plot. The windows and ventilators of the same opens towards the southern side which was left as a passage at the time of purchasing the land. Plaintiffs are also using the said passage for the proper ventilation of their building. Plaintiff no.1 had also opened the gate of his plot towards the southern side. On 11.09.1980, plaintiff no.1 namely Joginder Singh and his brother Sohan Lal purchased another plot of the same measurement from the defendant and possession of the said plot was given to them on the backside of the building of plaintiff no.2. The passage was given to Joginder Singh and Sohan Lal on the southern side of the plot. Plaintiffs are using the said passage for the last 20 years. The door, windows and ventilators of the building of the plaintiffs opens towards the southern side of the passage. Defendants have no right, title or interest in the suit property as the same was left as passage. But, the defendants have threatened to close the aforesaid door, windows and ventilators by raising the wall and cultivating the place in dispute. Hence this suit.

4. Defendant-respondent contested the suit on the grounds *inter alia* that there is no passage towards the southern side of the disputed property. Plaintiff no.2 has purchased only 1 kanal of the land out of the

whole *khata* from the defendant vide sale deed dated 15.03.1980 in the shape of plot measuring 32 feet towards eastern side, 34 ½ feet on the western side and 117 feet on the northern-southern side. The recitals in the sale deed that plot was measuring north-south 57 feet and east-west 64 feet and there is a passage towards the southern side are totally wrong and have been denied. It is further pleaded that no passage towards the southern side of the disputed property was purchased by the plaintiffs from the defendants. The remaining property i.e. plot of plaintiff no.1 and his brother was also purchased from the defendant. Defendant was an old man. Plaintiff had got mentioned the wrong recitals in the sale deed dated 15.03.1980 which is not as per actual and factual position existing at the spot. So, the same is wrong, incorrect and liable to be set aside and cancelled to that extent. Later on, plaintiff no.1 and his brother Sohan Lal has purchased another plot measuring 01 kanal from defendant vide sale deed dated 11.09.1980 of the same dimension. It is further pleaded that there is no passage towards southern side of the property of the plaintiffs, rather the same is the property owned by defendant. With these pleas, defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 07.05.2007:-

1. Whether there is any passage on the southern side of the passage of the home of the plaintiff? If so, its effect?OPP
2. Whether the suit is not maintainable?OPD
3. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court dismissed the suit of the appellants-plaintiffs vide impugned judgment

and decree dated 27.01.2009.

7. Aggrieved with the aforesaid judgment and decree, appellants-plaintiffs preferred the appeal. The same has also been dismissed by the learned District Judge, Kapurthala vide impugned judgment and decree dated 04.03.2011. Hence this Regular Second Appeal.

8. I have heard Mr. Sarwan Singh, Sr. Advocate with Mr. N.P.Rapri, Advocate, learned counsel for the appellants, Ms. Munisha Gandhi, Sr. Advocate with Ms. Salina Chalana, Advocate, learned counsel for respondents and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellants contended that plaintiff no.2 has purchased the plot vide sale deed dated 15.03.1980 (Copy Ex.PY). Said sale deed has been executed by deceased-defendant-Swaran Singh. In the said sale deed, the passage on the southern side of the plot in question is categorically mentioned. The said recitals in the sale deed has never been challenged by the defendant. After the purchase of the plots, the plaintiffs have constructed the building, door, windows and ventilators were left towards the passage situated on the southern side of the plot. They are also using the said passage for the last more than 20 years. From the evidence adduced by the plaintiff also this fact is established that there exists the passage on the southern side of the building of the plaintiffs.

10. He further contended that the recitals in the sale deed Ex.PY dated 15.03.1980 are clear and unequivocal which shows the existence of

the passage on the southern side. Defendant is bound by the said recitals. To support his contentions, he has relied upon case **Ishwari Devi (Smt) Vs. Sarla Devi (Smt) and others 1995 Supp(2) Supreme Court cases 86.**

11. On the other hand, learned counsel for the respondents-defendants contended that the recitals in the sale deed dated 15.03.1980 are factually incorrect. The recitals in the sale deed cannot establish the existence of the passage on the southern side of the house of the plaintiffs-appellants. She contended that there was no reason to leave the passage only to the extent of the front portion of the plot. There is no recital in the subsequent sale deed vide which the plot has been purchased by plaintiff no.1 and his brother. If, there would have been any such passage, it must have been mentioned in both the sale deeds. She further contended that the site in dispute is the land owned by defendants. They are in possession of the said land as owner and appellants-plaintiffs have no right of any such passage over the land owned and possessed by the defendants. They also had no right of injunction to use the said land as passage and to open the doors, windows and ventilators towards that land. She contended that the mere recitals in the sale deed cannot establish the existence of the passage particularly when this fact has been contradicted from the statements of the witnesses. To support her contentions, she relied upon case **Suklal & Ors. Vs. Chhatram & Ors. 2011(1) CG.L.R.W.381.**

12. I have duly considered the aforesaid contentions.

13. Learned District Judge while affirming the findings of the

learned trial Court concluded as under:-

8. “Considering the arguments addressed by Counsel for both the parties and going through the record of the case, I find that the cross-examination of PW-3 Ajit Singh clearly shows that there is not any passage on the southern side of the house of the plaintiffs. This fact is further corroborated from the cross-examination of PW-1 Hardeep Kumar Kanungo Circle, who has categorically stated that he never fixed any point before start of the demarcation in this case. No Shajra Axs has been placed on record, which may show that there is any passage at the spot as alleged by the plaintiffs. He has categorically stated that there is not any passage on the southern side in the revenue record. Neither in the plaint nor in the sale deed Ex.PY dated 15.03.1980 there is a mention of the fact, as to what is the width of the street, if any, on the southern side of the house of the plaintiffs. Moreover, there is another sale deed dated 11.09.1980 Ex.PX executed by defendant where he has sold the said plot on the back side of the plot already sold to plaintiffs and there is no mention of any such passage.

The above discussion shows that there is not any passage on the southern side of the house of the plaintiffs. So, the plaintiffs have failed to prove their case and thus, they are not entitled for any permanent injunction prayed for.”

14. The aforesaid well reasoned findings do not suffer from any legal infirmity. Learned senior counsel for the appellants has laid the much stress on the recitals of the sale deed dated 15.03.1980 (copy Ex.PY) vide which defendant-Swaran Singh has sold the plot measuring north-south 57 feet and east-west 64 feet to plaintiff no.2-Ram Murti. No doubt, in this sale deed the passage has been shown on the southern side of the said plot. But, mere recitals in the sale deed cannot establish the existence of the passage. The said recitals has to be corroborated from other cogent, convincing and reliable evidence. To support this view reference can be made to case **Mohan Singh Vs. Nirmal Singh and**

others 1971 PLJ 27. In case **Smt. Joginder Kaur and others Vs. Amrik Singh 2009(4) R.C.R (Civil) 82**, this Court again reiterated the legal position that merely on the basis of recitals in the document i.e. agreement, the possession cannot be said to be proved to be delivered. The Hon'ble **Himachal Pradesh High Court in case Prem Lal Vs. Bhagdei 2014 (sup) Him. L.R. 2017** has also laid down that mere recitals in the agreement to sell that possession of the suit property has been delivered at the time of its execution by vendor to the vendee was of no importance nor have any probative force. Thus, mere recitals in the sale deed Ex.PY with respect to the passage on the southern side of the plot sold by defendant to appellant-plaintiff no.2-Ram Murti is not sufficient to establish the existence thereof.

15. The recitals in the sale deed Ex.PY are rebutted from the statement of PW-1 Hardeep Kumar Kanungo Circle, who has demarcated the suit property. In the cross-examination PW-1 admitted that there is no passage towards the southern side of the property of the plaintiffs as per the revenue record and also no passage is there at the spot. The cross-examination of PW-3 Ajit Singh also negates the existence of any such passage.

16. This fact is not disputed that plaintiff no.2-Joginder Singh and his brother Sohan Lal have purchased the plot measuring north-south 57 feet, east-west 64 feet i.e. of the same size from the defendant. There is no reference of the existence of any passage on the southern side of this plot. The plot purchased by plaintiff no.2 and his brother vide sale deed dated 11.09.1980 Ex.PX adjoins on the backside of the plot previously

purchased by plaintiff no.2 that is why in the site plan Ex.PW2/2 the length of this plot on the southern side has been shown to be 115 feet 9 ½ inch, on the northern side 112 feet 6 inch, the width of the plot on the east side is 62 feet 10 inch and on the western side 68 feet 4 /12 inch. If there would have been any passage in existence on the southern side, this fact must have been mentioned in the later sale deed dated 11.09.1980 also. There is no reason to believe that the passage was left or provided only to the length of 57 feet on the southern side of the plot purchased by plaintiff no.2 vide sale deed dated 15.03.1980 alone. It is not explained in the plaint as to where this passage further leads. There could be no passage to the length of only 57 feet abutting one plot. If, there would have been any passage in existence, it must have been mentioned in the sale deed dated 11.09.1980 also. Both, the learned Courts below have observed that no such passage have been shown in the revenue record. Thus, in these circumstances, mere recitals in the sale deed dated 15.03.1980 (copy Ex.PY) are not sufficient to establish the existence of the passage on the southern side of the building/house of the appellants.

17. I fail to understand as to how **Ishwari Devi 's case** (supra) will support the contentions raised by learned counsel for the appellants as in that case the Hon'ble Supreme Court has laid down that where the property has been specifically identified in the deed, the recitals in the sale deed are clear and unequivocal with respect to the transfer of the two storied building called Anand Bhawan in favour of the appellant. Appellant will become the owner of the entire Anand Bhawan and entire area stood vested in her. So, even in that case the erroneous recitals in the

sale deed with respect to the area of the building were not relied upon. Consequently, the appellants are not entitled for the injunction as prayed for by them in the suit.

18. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

19. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

20. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No