

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5082 of 2012 (O&M)

Date of Decision.20.05.2016

Sarjeet son of Sh. Ram Nath

.....Appellant

Vs.

Sajjan Singh and others

.....Respondents

Present: Mr. Gurcharan Singh Gandhi, Advocate
for the appellant.

Mr. P.R. Yadav, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

The appellant-defendant No.2 is in regular second appeal against the judgment and decree rendered by the lower Appellate Court where it reversed the finding of the trial Court dismissing the suit filed by the plaintiff-respondent No.1 and granted injunction in favour of him restraining defendants from not to interfere in the *gair mumkin* plot measuring 1 kanal 1 marla comprised in Khewat No.96, Khatoni No.110, Khasra No.136, Kitta No.1 situated in village Bhakhari, Tehsil Narnual and further not to forcibly open the gate or raise the wall on the western side of the *gali* and not to obstruct the common passage depicted in red colour in the site plan annexed with the suit. There has also been a further injunction not to raise any *pucca* wall or create nuisance on the passage 9'x6' in width on the northern side of the plot which has been left along with the plot/area.

behalf of the appellant will support his grounds of appeal by arguing that there is total misreading of the facts on the part of lower Appellate Court. He submits that there is misreading of the entire evidence on the part of the lower Appellate Court as the trial Court had come to a categorical conclusion that the plaintiff had not been able to prove the existence of street in any of the documents. It is settled proposition of law that the plaintiff has to discharge the onus as envisaged under Section 101 of the Indian Evidence Act. Though no objection was filed against the report of the local commissioner Ex.P1 comprising site plan Ex.P2 but it does not depict the existence of the passage whereon the lower Appellate Court has made a heavy reliance. Even the alleged writing which was taken into consideration, is not binding upon the appellant-defendant No.2 as it was between the other parties. Though appellant-defendant No.2 in evidence submitted that the plaintiff is the owner of half share in the suit land, the ownership is of plot adjacent to the haveli on the northern side and the other co-parceners including the defendants have made their house on the southern side. Few lines of the cross-examination cannot be read in isolation as the entire tenor of examination-in-chief and the cross-examination has to be looked into and therefore, the existence of settlement dated 17.05.1999 would be meaningless. The lower Appellate Court has misdirected and misread the statement of PW1-Lal Chand who had specifically admitted that the wall which had been raised upon the land by the defendants belongs to the defendant. On the other hand, the another land is lying vacant. He also admitted that the plaintiff and Surrender, both are owners of the disputed plot but Surrender was not made party. He further submits that the plaintiff categorically admitted the execution of Ex.D1,

ownership of Surender Singh who was not made party and also admitted that the alleged writing dated 17.05.1999 is an unregistered document. PW-4/A produced at the instance of PW4 has spill the beans who stated that he had no knowledge of the location of the place though he identified the signature of Prahalad Sharma. The counsel for the appellant submits that there has been a misreading of the statement of the appellant-defendant No.2 and thus urges this Court to formulate the following substantial questions of law as drawn in the memorandum of appeal for determination by this Court:-

1. Whether the judgment/decreed of reversal of the lower Appellate Court is sustainable in the eyes of law ?
2. Whether the plaintiff is to stand on his own legs to prove his case or can derive any benefit of the weakness of the defendants?
3. Whether the objections raised at the time of exhibiting the documents are not to be decided by the courts?
4. Whether the lower appellate court has not misread the entire evidence and the judgment/decreed of reversal is sustainable?
5. Whether a deed/writing to which the appellate is not a party which is an unregistered document can bind the appellant?

He, further, submits that report of the local commissioner Ex.P1 was seriously objected to and the adverse party has not been able to overcome the same and therefore, the same could not be relied on as done by the lower Appellate Court.

Mr. P.R. Yadav, learned counsel appearing on behalf of the respondent supports the finding of the lower Appellate Court being the court of fact and law, rendering its finding after taking into consideration both oral and documentary evidence and after going through Ex.P2 and report of the local commissioner Ex.P1 showing the existence of the street.

There is no force in the submissions of Mr. Gandhi as the report was never objected to the testimony of afore-mentioned witnesses and therefore, the question of admissibility of the document is neither here nor there. The defendant No.2-Sarjeet admitted the writing dated 17.05.1999 Ex.PW3/B and further stated that they do not want to fix any gate on the place left by them and also do not want to obstruct the same by raising a wall. The afore-mentioned statement weighed in the mind of the lower Appellate Court while forming an opinion that the defendant admits the existence of street.

I have heard both the learned counsel and have gone through the paper book and of the view that the appeal sans merit, for, the report Ex.P1 of the local commissioner has spill the beans which shows the existence of the street. The appellant-defendant did not file any objection much less even did not ask any question to the witnesses with regard to exhibition of the aforesaid report. There is no force in the submission of Mr. Gandhi. I have gone through the record of the courts below. No such objection with regard to exhibition of the report as Ex.P1 at any point of time was taken. The admission of appellant-defendant No.2 Sarjeet Singh leaves no doubt that there was existence of the street and by plain reading of the statement of the defendant, the lower Appellate Court was able to form an opinion with regard to existence of a street or passage much less a

window or gate sought to be injuncted. If Sarjeet Singh-appellant had admitted the existence of writing dated 17.05.1999 and the writing envisaged the existence of street, he cannot take a complete summersault giving a different colour to his own intention of not obstructing the passage by raising a wall. For the sake of brevity, the relevant portion of the finding rendered by the lower Appellate Court is reproduced as under:-

"No doubt, as is evidenced by document Ex.DW1/B which document is also admitted by plaintiff Sajjan Singh when he stepped into the witness box as PW3 that a partition had taken place in the year 1979 vide document Ex.D1, no passage was left in between the land which came to the share of Deep Chand and Ram Nath. However, defendant Sarjeet Singh when he stepped into witness box, he has admitted that they have been residing separately since the writing of 17.05.1999. Thus Sarjeet Singh defendant admitted the writing dated 17.05.1999 produced on the file as Ex.PW3/B. He has then stated that they do not want to fix any gate on the space left by them and also do not want to obstruct the same by raising a wall. Now this statement of Sarjeet Singh defendant shows that he admits the existence of street in between the houses of plaintiff Sajjan Singh and defendant Sarjeet Singh who is predecessor in interest of Ram Nath. Further, DW1 Ram Swarup has admitted the existence of way in between the houses of the plaintiff Sajjan Singh and defendant Sarjeet Singh. Further this fact that there exists a way in between the houses of plaintiff and defendant is further clear from the report of Local Commissioner Ex.P1. A perusal of this report shows that in para No.3 he has specifically mentioned that the plaintiff Sajjan Singh and defendant No.2 Sarjeet had left a way to go to their houses. He has further reported that in the western side of this way there is house of Sajjan Singh whose main gate and gate of one Baithak open in this way. It may be mentioned here that local commissioner had also reported that defendant No.2 Sarjeet

had constructed a wall 'A-C' in between the Rasta which is fresh. Now this evidence on the file shows that there is a way in between the houses of plaintiff and defendant Sarjeet which matter was also resolved vide document Ex.PW3/B. No doubt, this document is signed by Sada Ram, who is one of the sons of Ram Nath. However, as discussed above this writing Ex.PW3/B has been admitted by defendant Sarjeet when he stepped into the witness box as DW2 which writing having not created new right is not compulsorily registrable. Thus, the above evidence on the file proves that there is a way in between the houses of Sajjan Singh and defendant Sarjeet Singh, which way is sought to be obstructed by defendant No.2, Sarjeet by raising a wall 'A-C' for which he has no right."

For the aforesaid foregoing reasons, I am of the view that there is no ground made for interference as the lower Appellate Court being the court of fact and law, after examining the oral and document evidence, has formed a finding which is correct and no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed accordingly.

(AMIT RAWAL)
JUDGE

May 20, 2016
Pankaj*