

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1493 of 2016 (O&M)

Date of Decision: 06.10.2016

Surtu Singh and others

... Appellants

Vs.

Navjot Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Mohit Garg, Advocate,
for the appellants.

Mr. Ajay Pal Singh, Advocate,
for the respondent.

Amol Rattan Singh, J.

This is the second appeal of the defendants after the suit filed by the respondent-plaintiff (hereinafter to be referred to as the plaintiff), seeking a decree of "permanent prohibitory injunction" against the appellants herein (hereinafter to be referred to as the defendants), was decreed in his favour by the learned Civil Judge (Senior Division), Sangrur, on 17.09.2014, and the first appeal filed by the appellants-defendants, was dismissed by the learned Additional District Judge, Sangrur, on 13.08.2015.

2. The suit set up by the plaintiff (the facts herein being taken from the judgments of the Courts below), was that both the parties are stated to be residents of village Raisingh Wala, Tehsil and District Sangrur, and the main gate of the house of the plaintiff is stated to be abutting a street. A site plan depicting the ground situation, was annexed with the plaint. The street was stated to be in the ownership of the Gram Panchayat of the village, used by

the inhabitants there, with the main gates of their houses also opening onto it.

The main gate of the house of the defendants is also stated to be abutting the said street, which is stated to be ending at the main gate of the house of the plaintiff. The said street and gate are stated to have been used by the plaintiff since long for ingress and egress to his residential house.

It was further contended that other than the said passage, there was no other way to the plaintiffs' house.

The Gram Panchayat of the village is also stated to have started brick-laying the street.

It was further contended in the suit that defendants no.2 to 4, i.e. the sons of defendant no.1, were in the habit of creating disputes with people and were also trying to stop the plaintiff and his family from passing through the street in question. The matter is also stated to have been taken to the Panchayat of the village, as also to the police and a compromise was effected between the parties, with the defendants having assured the plaintiff that they would not "indulge in such like acts in future".

However, the interference allegedly having started again, on the usage of the street by the plaintiff, the suit was filed by him.

3. Upon notice having been issued, the defendants appeared and filed their written statement taking the usual preliminary objections of non-maintainability etc. and on merits, stating that a wrong site plan had been annexed by the plaintiff and in fact, the street actually ended at the house of the defendants but the plaintiff wished to encroach upon the area by demolishing the construction of the defendants.

It was further contended that there was actually no door of the

house of the plaintiff abutting the said street and actually he was approaching his house from the main road of the village.

There was, obviously, denial of all allegations made against the defendants by the plaintiff.

4. No replication having been filed, the following issues were framed by the learned Civil Judge:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff has not come to the Court with clean hands? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action to file the presentsuit? OPD
5. Relief.”

5. The suit was initially dismissed on 10.11.2010 but on appeal before the first appellate Court, it was remanded to the learned Civil Judge, and vide an order dated 24.08.2011, the learned District Judge granted one opportunity to the plaintiff to conclude his evidence and directed the trial Court to dispose of the application dated 13.10.2010 for summoning the witnesses.

Thereafter, the said application was also dismissed but other evidence was still led by the plaintiff.

6. The plaintiff examined himself as PW2 and one Visakha Singh as PW1, Kulwant Singh, Ex-Sarpanch as PW3 and Jagga Singh as PW4.

The defendants examined defendant no.4 as DW1, one Jagroop Singh as DW2, Rangi Khan as DW3, Gafoor Khan as DW4 and one Dharminder Singh, Draftsman, as DW5.

7. The plaintiffs' first witness deposed with regard to the site plan prepared by him, Ex.P1, further stating that other than the street in question, there was no passage to the house of the plaintiff. The other witnesses for the plaintiff also deposed in his favour, in terms of his plaint, with PW3, Kulwant Singh, Ex-Sarpanch, also testifying that the street was actually a public street being used by the people of the village for ingress and egress to their houses since long.

This witness also proved the compromise earlier reached between the parties, Ex.P2.

8. Defendant no.4 (DW1) deposed in terms of the written statement, with DWs2, 3 and 4 also supporting the stand of the defendants, stating that the plaintiff actually wanted to encroach upon the area of the house of the defendant by demolishing it.

DW5 Draftsman Dharminder Singh testified in support of the site plan set up by the defendants, Ex.D1.

Thereafter, the plaintiff tendered into evidence documents which were not exhibited but taken on record as Marks X & Y.

9. Upon appraising the evidence, the pleadings and arguments, the learned Civil Judge found that the site plans Ex.P1 and D1 were not identical to each other, inasmuch as, whereas Ex.D1 showed the houses of Ram Chand and Jagga Singh to be on the northern side of the street in question, Ex.P1 showed the houses of one Jaila Singh and Peeta Singh instead. Similarly, other discrepancies were also noticed by the Court, specifically the fact that in the site plan relied upon by the defendants, their house was shown to have been erected upon the disputed street.

Further, whereas the defendant had shown the house of the

plaintiff to be opening onto the main "phirni" road of the village, in the plaintiffs' site plan, it was the house of one Lalli which was opening on to the "phirni".

10. It was further noticed that a compromise had actually been arrived at between the parties in the presence of the SHO concerned and thereafter, the plaintiffs' mother had filed a complaint and proceedings under Sections 107/151 of the Cr.P.C. had been initiated by the police against the defendants. The defendants also admitted to the complaint having been filed.

11. It was also recorded by the learned Civil Judge that DW2, in his cross-examination, had stated that the house of the plaintiff was situated on the eastern side of the street, from which it could be made out that it was actually located at the end of the street. The location of the house on the eastern side was also admitted by DW4 in his cross-examination.

From the aforesaid evidence, as also from a comparison of the two site plans, that Court came to the conclusion that actually it was not the house of the plaintiff but the house of Lalli aforesaid, which was abutting the main "phirni" road of the village and that the house of the plaintiff was actually opening only onto the street in question.

Consequently, having come to the aforesaid finding of fact, the suit of the plaintiff was decreed in his favour by the Civil Judge, restraining the defendants from encroaching upon any part of the street leading to the house of the plaintiff or from creating any kind of hurdle or obstacles in his path.

12. In the appeal filed by the defendants before the learned first appellate Court, that Court also, after noticing the facts and evidence led, came to the conclusion that the street was actually in the ownership of the

Gram Panchayat and that the main gate of the house of the defendants also abutted onto the street.

The defendants had tried to, in fact, state that the plaintiff wanted to encroach upon the area of the defendants. However, it was further found by that Court that even Gafoor Khan (DW4) had admitted that the house of the plaintiff abutted the street in question and that the house of Lalli Singh was on the northern side of the street.

The compromise arrived at between the parties was also noticed by the first appellate Court.

Hence, finding no reason to interfere with the finding of fact given by the learned lower Court, the first appeal of the defendants was dismissed.

13. Before this Court, learned counsel for the appellants (with the 2nd defendant, Makhan Singh, not having challenged the decree in favour of the plaintiff, either in the first appeal or even now), submitted that a perusal of the site plan revealed that the plaintiff actually had an access to the main "phirni" road of the village and it was only the rear of his house that abutted the street in question, which actually ended not at the rear of his house but at the house of the defendants, i.e. one house before the plaintiff.

When the case had come up initially for hearing, learned counsel for the appellants had submitted that the findings of the Courts below are wholly perverse, inasmuch as, the street leading to the access to the appellants' house had been blocked off by virtue of the impugned judgments and decrees.

Consequently, while summoning the records of the Courts below, demolition of any part of the appellants' house had been stayed by

this Court.

Thereafter, notice of motion was issued to the respondents with the stay continued and upon their appearance through their counsel, it had been contended that, as a matter of fact, it is actually the ingress and egress to the house of the plaintiff that would be blocked and not to that of the defendants, who were actually encroaching upon the street, taking advantage of the location of their house, which is actually across the street from that of the plaintiff.

14. The records of both the Courts below not having been summoned, learned counsel had been asked to place on record both the site plans, Exs. P1 and D1, which he had duly done. A perusal of even Ex.D1, i.e. the site plan set up by the appellants-defendants, of course bears out that a house shown to be that of Manjeet Singh, opens on to the main "phirni" road, with the rear end of it abutting the street in question, which according to the learned counsel, is actually not a street any longer at that point but the property of the appellants-defendants.

15. Firstly of course, this being a second appeal there would be no reason at all for this Court to interfere with the concurrent finding of fact recorded by both the Courts below, unless such findings were shown to be wholly perverse. In fact, to the contrary, upon specific query, learned counsel could not deny that the observation made by the Courts below to the effect that Jagga Singhs' house opens onto the main street, was because of the fact that Jagga Singh was an immediate relative of the plaintiff and thus, the plot in question had obviously been divided with the rear portion coming to the share of the plaintiff.

A perusal of the site plan further shows that it looks rather odd

that an otherwise straight street would suddenly become differently aligned at the point where the house of the defendants exists, with a part of their construction jutting out onto the street.

Hence, it would seen that, as a matter of fact, taking advantage of the fact that the street came up to their house and that of the plaintiff and did not go beyond, the defendants decided to extend their own construction onto the street itself.

It is very possible that at some point the plot of the plaintiff opened onto the main road also. However, either due to a division of the house, or otherwise, the opening onto the main road went to Jagga Singh, whereas the part falling to the share of the plaintiff could only have access from the street abutting his part of the suit property.

Learned counsel for the appellants also could not deny what was observed by this Court hereinabove.

16. However, even if the aforesaid reasoning is not to be looked at, without any specific evidence of any division of the property having come on record, I still see no ground to interfere with a concurrent finding of fact arrived at by the Courts below, even as per the site plans exhibited there, no perversity thereinhaving been made out.

17. Consequently, finding no merit in the appeal, it is dismissed, with costs of Rs.5000/- imposed on the appellants.

(AMOL RATTAN SINGH)
JUDGE

October 6, 2016
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Whether speaking/reasoned	Yes
Whether Reportable	Yes