

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

**R.S.A No.2301 of 2016 (O&M)
Date of decision :26.08.2016**

Punjab State through Collectors, Amritsar and another

..... Appellants

Versus

Shri Jaswinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Ajaib Singh, Addl.AG, Punjab
for the appellants.

DARSHAN SINGH,J

CM No. 6028-C of 2016

This application has been filed under Section 5 of the
Limitation act for condonation of delay of 31 days in filing the appeal.

Heard.

In view of the reasons mentioned in the application, the
application stands allowed and the delay of 31 days in filing the present
appeal is hereby condoned.

R.S.A No. 2301 of 2016 (O&M)

The present appeal has been preferred against the judgment
and decree dated 18.12.2015 passed by the learned Additional District
Judge, Amritsar, whereby the appeal filed by appellants-defendants
against the judgment and decree dated 18.07.2009 passed by the learned
Civil Judge (Jr. Division), Amritsar, has been dismissed.

2. Plaintiffs-respondents have filed the suit for permanent

injunction restraining the appellants-defendants from interfering in the cultivation and possession of the plaintiffs over the suit land measuring 31 Kanals 7 Marlas bearing Khasra no. 22/9/2(5-8) 2/1 (5-8) 1 (8-0) 10 (5-12) 12/1(3-0) 21/5/2(3-14), 21/6/1 min (0-5) situated in the revenue estate of village Thriewal, Tehsil and District Amritsar.

3. As per averments in the plaint, the plaintiffs have purchased the suit land measuring 31 Kanals 7 Marlas as detailed and described in the head note of the plaint by virtue of the sale deed dated 19.05.1999 and duly registered on 27.05.1999 for a valuable consideration from Sukhwinder Singh @ Sukhjinder Singh and Baldev Singh sons of Santokh Singh and they were the owner in possession of the land in dispute. Appellants-defendant without any right, title and interest in the suit land had carved out the road which has been shown in black colour in the site plan illegally, forcibly and without paying any compensation. Plaintiffs as well as their predecessors had made many representations to the defendants to remove the road from their land. It is further pleaded that there is another land adjoining to the land in dispute which has been shown in blue colour in the site plan which was under cultivation of the predecessors-in-interest of the plaintiff and as soon as they purchased the said land, this land also came in their possession and they are cultivating the same. The area of this land is approximately 6 Kanals 8 Marlas. The area of the land belonging to the plaintiffs measuring 31 Kanals 7 Marlas only completes when the said land is included therein. It is further pleaded that plaintiffs are in possession of the land shown in blue colour in the site plan and are cultivating the same. So, defendants have no right

to interfere in the cultivating possession of the plaintiffs over the suit land. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that Punjab Government had made a policy of connecting all villages with *pucca* road in the year 1973. Under that policy, the villagers were requested to hand over the land along with earth work in embankment. The road in question A.P.K Road (Talwandi) to Majitha Fatehgarh Churia Road, (Hamja) in village Thriewal was constructed in public interest under the said policy in which villagers had voluntarily handed over the land along with earth work to the P.W.D Department for making it *pucca*. Till 01.06.2004, no objection was raised by anybody regarding the ownership of the land under road. After the lapse of 31 years, the objections of the plaintiffs should not be entertained and their claim is barred by law of limitation. The road is running for the last 31 years and has become the property of the State Government. Defendants are also claiming adverse possession over the land in dispute. With these pleas, appellants-defendants pleaded for dismissal of the suit.

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

1. Whether the plaintiff is entitled to the relief of declaration prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Relief.

6. On appreciating the evidence adduced by the parties and the contentions raised by their counsels, the learned trial Court decreed the suit filed by plaintiffs-respondents vide impugned judgment and decree dated 18.07.2009.

7. Aggrieved with the aforesaid judgment and decree, appellants-defendants have preferred the appeal. The same was also dismissed by the learned Additional District Judge, Amritsar, vide impugned judgment and decree dated 18.12.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Ajaib Singh, learned Additional Advocate General for the State of Punjab and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that the land in dispute measuring 6 Kanals 8 Marlas is the part of the road. The road was constructed in the year 1973 under the policy formed by State Government to connect all the villages with *pucca* roads. The land owners have voluntarily given the land along with earth work to the PWD Department for constructing the road. He contended that no objection was raised by anybody regarding the ownership of the land up to June 2004. Plaintiffs-respondents have raised the dispute after the lapse of more than 31 years. Their claim is stale and is barred by limitation. He contended that appellants-defendants are in possession of the land in dispute which is part of the road. So, the plaintiffs-respondents were not entitled for any injunction.

10. I have duly considered the aforesaid contentions.

11. As per the case of the plaintiffs, they had purchased total land measuring 31 Kanal 7 Marlas vide registered sale deed executed on 19.05.1999 and registered on 27.05.1999 from Sukhwinder Singh @ Sukhjinder Singh and Baldev Singh sons of Santokh Singh. They are

claiming that the road has been constructed in the area shown in black colour in the site plan. Another land measuring 6 Kanal 8 Marlas shown in blue colour in the site plan is under their cultivation, which is not the part of the road. So, the dispute in the present suit is with respect to the land abutting the road which the plaintiffs-respondents are claiming to be in their possession and they are claiming injunction qua that land.

12. The learned First Appellate Court while taking into consideration the entire oral as well as documentary evidence on record recorded the findings as under:-

“In order to prove their ownership and possession over above said land measuring 31 Kanals 07 Marlas including suit land plaintiffs proved sale deed dated 19.05.1999 registered on 27.05.1999 Ex.P-1 by examine its attesting witness Gurdip Singh PW-1 and Bira PW-4. Both of them are consistent in their statement regarding purchasing of above said land by the plaintiff Jaswinder Singh and others from its previous owners Sukhwinder Singh & other vide aforesaid sale deed dated 19.05.1999 registered on 27.05.1999 Ex.P-1 in their presence for valuable consideration. Plaintiff Jaswinder Singh has also come into witness box as PW-5 and proved sale deed as he appeared on behalf of vendees at the time of purchasing suit land from Sukhwinder Singh & others. Ld. G.P cross-examined them at length but he has failed to shatter their testimony, rather Inderjit Singh SDO DW-1 got examined by defendant has admitted in his cross-examination that plaintiffs are owners in possession of suit land measuring 31 Kanals 07 Marlas and he has seen said land. He has also admitted that site plan Ex.P-2 produced on file by plaintiff by stating that site plan is correct as per spot. He has also admitted that plaintiffs have been cultivating land shown with blue colour in the site plan Ex.P-2. He has also stated that defendant department has no concern whatsoever with land shown as mark A & B in the site plan Ex.P-2 abutting to the road. Sukhdev Singh, retired Kanungo PW-2 got examined by defendant who has produced on file photo copy of the site plan mark A has admitted in his cross-examination that in the plan mark A at point A-1 to A-2 there is

road and from point A-3 and A-4, there is agricultural land of plaintiffs. Said agricultural land of plaintiffs from point A-3 to A-4 in the plan mark A produced on file by defendants tally with suit land shown with mark B in blue colour of site plan Ex.P-2 produced on file by plaintiffs. Sukhdev Singh DW-2 has also admitted in his cross-examination that land of plaintiffs has been shown with blue colour at point A measuring 06 Kanals 8 Marlas and total land of plaintiffs is 31 Kanals 07 Marlas if the land shown in blue colour is included therein. Thus, both the above named witnesses of defendants have admitted possession of plaintiffs upon suit land shown with blue colour in the site plan Ex.A-2 abutting to the road. Plaintiffs have not sought the relief regarding land underneath the road. Copy of jamabandi for the year 2000-2001 Ex.P-3 and copy of khasra girdawri for the year 2002-2003 Ex.P-4 also shows the ownership and possession of plaintiffs upon the suit land. So doubt, there is a road abutting to the suit land claimed by the plaintiffs which was constructed by the defendant PWD, but defendants have not produced on file any record regarding land abutting to the said Road being a part of road. Thus, plaintiffs having lawful possession upon suit land have a right to protect it by recourse of law and defendants have no right to interfere in the peaceful possession of the plaintiffs upon the suit land forcibly and illegally.”

13. The aforesaid findings recorded by the learned First Appellate Court are based on the correct appreciation of the evidence on record. With these findings, the learned First Appellate Court has affirmed the findings recorded by the learned trial Court. The learned Courts below have rightly observed that appellants-defendants have not produced any material on record to show that the land abutting to the road is also the part of the road which is in possession of the plaintiffs-respondents. So, certainly they are entitled to protect their possession against any forcible and illegal interference by appellants-defendants.

14. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

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

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

August 26, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No