

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2400 of 2016

Date of Decision:20.09.2016

Mohinder Singh

... Appellant

Vs.

Joti Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. H.P.S. Sandhu, Advocate,
for the appellant.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff after his suit seeking permanent injunction against the respondents herein was dismissed by the learned Additional Civil Judge (Senior Division), Moonak, and the first appeal filed by him was also dismissed by the learned Additional District Judge, Sangrur, vide their impugned judgments and decrees.

2. The facts, as taken from the judgment of the learned Additional Civil Judge, are that the plaintiff had sought a decree of permanent injunction against the defendants, restraining them from demolishing a ceiling constructed by the plaintiff over a street that falls between the shops of the plaintiff, as shown in the map/site plan annexed by him with the plaint. It was contended that he was in possession of the shops as a co-sharer alongwith

with his nephews and that his residential house was behind the shops and further, that he had kept a '5' site' wide area between the shops as a street and had constructed a ceiling over both the shops, by laying slabs, “for the welfare of his children”.

The ceiling was stated to be 2' in width.

It was further contended that there was another street which leads to the house of defendant no.1 but he was habitual of making applications before the Nagar Panchayat, i.e. the 2nd defendant, and as such, the Nagar Panchayat wanted to demolish the ceiling constructed by the plaintiff, for which it had no right.

3. On the suit being filed and notice being issued, defendant no.1 (respondent no.1 herein) appeared and filed his written statement, raising preliminary objections with regard to maintainability, locus, cause of action etc. and on merits, stating that the street was actually a public street leading to the house of the said defendant. Thus, by laying slabs across it, the plaintiff had actually encroached upon the public street and that the plaintiff also used to throw water on the slabs, which leaked through them and fell on the street, causing difficulty.

It was further contended by respondent-defendant no.1 that actually the plaintiff wanted to purchase the house of the said defendant at a cheap rate and was, therefore, harassing him, though otherwise he had no right to construct on top of a public street.

4. As per the judgment of the learned Civil Judge, the suit against defendant no.2, i.e. Nagar Panchayat, Moonak, was actually withdrawn but it is seen that the said Panchayat was also impleaded as a 2nd respondent in the first appeal filed by the appellant-plaintiff, and has also been impleaded as

such in this second appeal.

5. The learned Additional Civil Judge framed the following issues:-

- “1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
3. Whether the present suit is beyond limitation? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether this court has no jurisdiction to try and decide the present suit? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
7. Relief.”

6. The plaintiff only examined himself as PW1 and defendant no.1 also examined only himself as a witness.

7. Upon appraising the pleadings and the evidence, the learned Civil Judge found that firstly, the plaintiff had not been able to show his ownership of the street over which he had constructed a ceiling. In fact, he had also testified that he was not the owner as per the revenue record and that four other persons had their houses on the street. He further testified that he had never obtained any sanction from the Nagar Panchayat with regard to the construction of the ceiling. Yet further, he admitted that the Nagar Panchayat had also him issued a notice to demolish the ceiling.

Hence, it was found by the Court that whereas on the one hand, the plaintiff had pleaded that he alone was using the street in question, he had testified that it was actually being used by the four persons whose houses were also constructed on it.

Further, though in his plaint, he had stated that the defendants were bent upon to demolish the ceiling, however, in cross-examination, it was revealed that he had actually filed the suit because defendant no.1 had threatened to beat him up.

Consequently, finding that the plaintiff was not the owner of the street over which he had constructed the ceiling, no injunction could be granted to him.

8. As regards the other issues, finding that he was not owner of the street, it was, therefore, held that he had no locus standi to file the suit.

The remaining issues with regard to maintainability, limitation etc. were, however, held in favour of the plaintiff but eventually, with the principal issue having been decided against him, the suit of the plaintiff was dismissed by the learned Additional Civil Judge.

9. The first appeal filed by him was also dismissed, on the same ground, that the appellant-plaintiff had not been able to establish his ownership over the street in any manner and as such, with even the Nagar Panchayat admittedly having issued notice to him to demolish the ceiling, encroachment upon a public street was very much established.

10. Before this Court, Mr. Sandhu, learned counsel for the appellant, though tried hard to convince this Court that the ceiling having been laid across the street, upon two shops of the plaintiff, the respondent-defendants could have no grievance against the same, on query learned counsel could not deny the fact that no document whatsoever could be produced by the plaintiff to show his ownership of the street in any manner.

Thus, in his testimony, he also having admitted that four other persons used the street, simply because at the relevant place, his two shops are

situated across the street, obviously does not give him any right to construct a ceiling over a public street.

Not only that, even the Nagar Panchayat had already issued a notice for removal earlier which he had not complied with.

11. Thus, with no evidence whatsoever led to the effect that the street was actually not a public street and was in the ownership of the appellant-plaintiff, I find no reason to interfere with the judgments of the learned Courts below.

Accordingly, this appeal is dismissed, with no order as to costs.

September 20, 2016
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(AMOL RATTAN SINGH)
JUDGE