

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 29.08.2016
RSA No.3072 of 2016 (O&M)

Deedar Singh

... Appellant

Vs.

Narender Kaur and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Paramjit Singh Jammu, Advocate,
for the appellant.

Amol Rattan Singh, J.

This is the second appeal by the defendant in a suit filed by the respondents-plaintiff, seeking a decree of mandatory injunction against the appellant-defendant, restraining him from removing bricks in an area measuring 7' x 20' in a 'gali' (lane) having a width of 22', stated to be situated on the Western side of the house of the defendant and plaintiff No.2, fully described in the site plan stated to have been annexed with the plaint.

The learned Civil Judge having partly decreed the suit of the respondents-plaintiffs and the learned lower appellate Court having affirmed that judgment and decree, this second appeal has been filed.

2. As per the case set up by the respondents, respondent-plaintiff No.1 is the owner in possession of House No.231/14, Ward No.11, Lal Singh Colony, Rania and plaintiff No.2 is the owner in possession of House

No.231/8 in the same ward and colony. The appellant-defendant is also stated to be a resident of the same colony, i.e. Ward No.11, Lal Singh Colony, Rania.

It was further contended that the house of the appellant is situated towards the southern side of the house of 2nd plaintiff and the northern wall of the appellant-defendants' house is a common wall with plaintiff No.2, being his southern wall.

It was, still further, contended that the public street aforesaid described had previously been saved with bricks by the Municipal Committee, between 20.12.2004 to 10.01.2005, and the work had been done with the consent of all persons residing on both sides of the street, with the colony itself being initially an unauthorised colony which subsequently had been 'regularised' by the government, vide a memo issued by the competent department on 17.12.2004.

3. The Municipal Committee, Rania, i.e. the 2nd defendant in the suit, started cementing the street, to make it a concrete street, due to which the committee removed some bricks in an area of 7' by 20', but paved the street with concrete only upto a width of 15'.

It was alleged that the 1st defendant (present appellant) seeing the street to be without bricks, opened his gate towards it and threatened to encroach upon it. Thus, it was contended that if he succeeded in doing so, then the width of the street would be reduced to 15' instead of 22'. It was further alleged that the Municipal Committee was, in fact, in collusion with the appellant-defendant and consequently, if he was not restrained from removing all the bricks, he would succeed in his 'ill design', thereby restraining the movement of vehicles of the public in the street.

Neither the Municipal Committee nor the present appellant allegedly having heeded the protests and requests of the plaintiffs, the suit came to be filed by them on 09.05.2009.

3. Upon notice issued to them, both the defendants appeared and filed their separate written statements, raising the usual preliminary objections regarding maintainability and locus etc.

On merits, the appellant (defendant No.1) submitted that the width of the street adjoining the rear side of the house of the appellant, towards the plot situated on the opposite side, is only 14', even as per revenue and Municipal records and as such, the allegation of encroachment or attempted encroachment is wholly false.

4. In its reply, the Municipal Committee stated that there was no record with regard to the width of the street, as the Municipal Committee had recently been constituted, though the alleged street "is in existence from the time of Panchayat".

The street having been paved with bricks and thereafter having been made a cemented street was admitted, further stating that the colony being unauthorised earlier, no records were existent with regard to the width and length of the street.

Yet further, it was stated by the Municipal Committee in its reply that no lay out plan of the colony was ever got sanctioned from the Town Planning Officer, but it was further stated that (on the spot) the street did not have a constant width, with it being 12' to 16' wide at different places and that actually the Municipal Committee had no concern with it. Still further, it was stated that none in the vicinity had made any complaint to the Municipal Committee and once the street had been paved, nothing further

remained to be done by it.

5. Upon the aforesaid pleadings, the following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to the mandatory injunction, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action and locus-standi to file the present suit? OPD
4. Whether plaintiff has concealed the true and material facts from this Court? OPD
5. Relief.”

The respondents-plaintiffs examined four witnesses, including plaintiff No.2, an architect, a typist and a Junior Engineer and tendered eight documents by way of documentary evidence.

6. The defendants examined defendant No.1 and one Swaran Singh and tendered one document, i.e. an attested copy of a sale deed dated 13.10.2013, Ex.D1.

7. Upon appraisal of the evidence and the pleadings, the learned Civil Judge came to the conclusion that the Junior Engineer examined as PW4 had also proved the measurement book, Ex.P5, in which the work of constructing of the lane was detailed, which showed that at some places the lane was actually between 17' to 18' wide, at different points. About 1½' had been left for drainage, due to which it was not paved. At the disputed spot, it was found that the street was at least 18' wide.

Further, though the appellant-defendant had contended that it was only 14' wide when he had purchased the plot in 2003, but even as per his

own admission, the work of laying bricks had started on 20.12.2004 and at

that time it was taken to be 18' wide at the spot. Hence, it was held that in the absence of any evidence produced by the defendant to show that it was actually 14' wide, it had to be accepted, in the light of the existing evidence with regard paving street, that it was 18' wide. Consequently, the suit was decreed to the above extent in favour of the respondents.

8. The present appellant filed an appeal before the first appellate Court as noticed, which also, upon appraising the aforesaid evidence found that as per record, the street was actually 17' to 18' wide at the spot when it was made 'pucca', as could be seen from the measurement book, and that space was left on both sides for drainage, measuring 1½' in all. At that time, there was no complaint of any kind from any resident of the area; therefore, including the drainage area, the street had to be held to be not less than 18' wide.

It was further held by that Court that the architect, PW2, had also shown some encroachment by the appellant-defendant, from the site plan, Ex.P1.

Consequently, finding no error in the findings of the learned Civil Judge, the appeal was dismissed.

9. Mr. Jammu, learned counsel for the appellant, has tried to stress on the fact, before this Court, that with the Municipality admittedly having stated that there was no plan sanctioned qua the colony, even at the time of its 'regularisation', the Courts below wholly erred in holding that the street was 4 feet wider at the spot in question.

Hence, he submitted that the findings of the Courts below are wholly perverse and need to be reversed.

10. Having considered the aforesaid argument and having perused

the judgments of the learned Courts below in detail, it is seen that a concurrent finding of fact, based on the evidence led in the form of a measurement book supported in oral evidence by the Junior Engineer concerned, has been recorded by the learned Courts below.

In the light of that evidence, as discussed hereinabove, I find no ground whatsoever to entertain this appeal and upset the specific concurrent findings of fact, on a simple question of measurement of a street, which has been shown to be 18' wide at the spot in question, even when the street was paved with bricks.

Hence, finding no merit in this appeal, it is dismissed *in limine*, with no order as to costs.

August 29, 2016
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reason	Yes/No
Whether Reportable	Yes/No