

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

R.S.A. No.2278 of 2015 (O&M)

Date of decision: 16.02.2016

Hardeep Singh

...Appellant

Versus

Bhagwan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J. P. Sharma, Advocate for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 05.12.2014, passed by the learned Additional District Judge, SAS Nagar, Mohali (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 04.07.2013, passed by the learned Civil Judge, Jr. Divn., Dera Bassi, (for short, the 'trial Court'), has been dismissed.

Briefly stated, the plaintiff filed a suit for mandatory injunction directing the defendants No.1 to 7 to remove the wall at point BC and restore the window and the door of the house of

the plaintiff at Point DW, and shut off the door at Point D of house of Bachan Singh, defendant No.2 and further directing defendant Nos.1 to 7 to restore the common passage measuring 4 feet x 27 feet at point ABEF and remove the gate at point G and also directing the defendants to restore the drain at point BAJK, fully shown in the site plan bounded as North-Bachan Singh, South-Prem Singh, East-Piara Singh, West-Sukhchain Singh situated in abadi of Village Nagla, Tehsil Dera Bassi, District SAS Nagar and suit for permanent injunction restraining the defendants, their agents, servants, representatives from changing the nature of the portion as well as passage by making any type of construction/obstruction over the suit land fully shown in the site plan as ABCDEF bounded as North-Bachan Singh and Jai Krishan, South-Sukhchain Singh, East-Hardeep Singh (plaintiff), West-Street situated in abadi of Village Nagla, Tehsil Dera Bassi, District SAS Nagar.

It was pleaded by the plaintiff that defendants No.1 to 6 and defendants No.8 to 10 had agreed to sell their abadi property to the plaintiff as the said property was adjoining the old house of the father of the plaintiff. In this regard, the defendants No.1 to 6 had executed agreement dated 21.1.2012

for full and final payment of Rs.1,60,000/- and defendants No. 8 to 10 had executed an agreement dated 19.01.2012 for payment of Rs.75,000/- in favour of the plaintiff. As per the agreement dated 21.1.2012, it was agreed that the portion shown in the site plan marked as BCDE would be kept open as the said portion was used for the purpose of Guga Mari. It was also agreed that the defendant No.2 was bound to shut off his door at point G which was opened towards the said portion. After purchasing the said abadi property, the plaintiff demolished his old house for constructing the new house. When he started the construction of his house, the defendants No.1 to 7 raised objection regarding installation of the window and door by him. They forcibly constructed a wall in front of the door and window at point BC. After that they occupied the entire passage measuring 4 feet x 27 feet and installed a gate at point AF. They also dug up a drain leading to the old house of plaintiff with a malafide intention. The plaintiff requested the defendants to stop their illegal activities but they refused hence, the suit.

Upon notice, the defendants No.1 to 7 appeared and filed joint written statement denying the execution of agreements in question. It was further pleaded that even if the agreements in

question are proved, the same do not clothe the plaintiff with any right whatsoever. The plaintiff had no right to install windows or doors on the property of the defendants. The defendants have raised a wall over their own property within their rights. The rights claimed by the plaintiff were denied.

Under issues Nos.1 and 2, the learned trial Court held that Ex.P-1 and P-2, agreement to sell did not confer any right or title upon the plaintiff in respect of suit property as the same were unregistered. However, in view of the provisions of Section 49 of the Indian Registration Act, the same could be looked upon for collateral purposes only. It was further held that the plaintiff failed to prove that he had a right to use the passage in question and he had been enjoying such a right since a long time so as to enable such a right to come into existence independently of the agreements in question. There was no mention regarding the use of the drain by its continuous operation. The plaintiff has also failed to prove that he was earlier using the drain. Further, there was no condition in the agreement Ex.P1 and P2, that the plaintiff was at liberty to use the passage and to open his window in the land of Guga Mari. There was no condition that the defendants shall not raise any

wall abutting the house of the plaintiff and shall not install any gate at the entrance of passage. The condition regarding the place of Guga Mari does not convey any inference that the plaintiff has any right to access the place of Guga Mari or that the defendants shall not use the Guga Mari to the exclusion of plaintiff. Rather the intention of the parties was to restrain both of them from changing the nature of the land belonging to the Guga Mari. In view of the findings returned on issues No.1 and 2, the relief of prohibitory and mandatory injunction was declined. Consequently, the suit was dismissed.

Feeling aggrieved, the plaintiff preferred appeal before the Additional District Judge, SAS Nagar Mohali, which came to be dismissed vide judgment and decree dated 5.12.2014. Hence, the present appeal.

The learned counsel for the appellant contends that once the execution of documents i.e. Ex.P1, and P-2, the agreements, is proved on record, the non-registration thereof does not preclude the plaintiff from proving his possession over the suit property. Even if Ex.P-1 and P-2, the agreements, are unregistered, the same can still be looked into for collateral purposes. It is further contended that apart from the agreements,

the plaintiff has proved on record his right over the suit land and that he was actually enjoying those rights much prior to the filing of the present suit. The defendants have wrongly installed the wall and gate in the suit property and the same are liable to be removed. It is lastly asserted that both the Courts below have misinterpreted the evidence brought on record, which resulted into miscarriage of justice.

I have heard the learned counsel for the appellant and have perused the entire record on file.

The plaintiff claims to have acquired the following rights from the defendants through Ex.P-1 and P-2, the agreements:-

“(i) Portion sown in the site plan BCDE would be kept open as the said portion is used for the purpose of Guga Mari;

(ii) The defendant No.2 was bound to shut off his door at point G which is opened towards the said portion;”

In this backdrop, the first and foremost question arising for consideration of this Court is whether Ex.P-1 and P-2, transfer any right in favour of the plaintiff. Section 17 of the

Indian Registration Act envisages that any instrument which purports or operates to create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property shall be compulsorily registered. Further, Section 49 of the Registration Act deals with the effect of non-registration of documents required to be registered. As per the provision, an unregistered document shall not affect any immovable property comprised therein, or be received as evidence of any transaction affecting such property or conferring such power. Proviso attached to the section states that an unregistered document may be received as evidence of any collateral transaction. The words “collateral purpose” were defined in **Vishvanath Haibatrao Deshpande vs. Ranganath Dhone Deshpande and others AIR 1948 Bombay 286** as follows:-

“Collateral purpose is any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property”

Thus, Ex.P-1 and P-2 being unregistered agreements are not admissible to prove its terms. The rights in

the land, as noted above, cannot be said to have been transferred in favour of the plaintiff. In the absence of Ex.P-1 and P-2, the plaintiff has not led any evidence to prove that he was enjoying any rights over the suit property independently. Both the Courts below have returned a concurrent finding that there is no evidence on record to the effect that the plaintiff was enjoying a right to use the passage in question. The plaintiff had no right on the land of the Guga Mari or the passage. These being the findings of fact cannot be interfered in the present regular second appeal. Therefore, no question of law, much less substantial question of law is involved in the present appeal. Hence, no interference is called for.

Dismissed in limine.

16.02.2016

SN

(JITENDRA CHAUHAN)

JUDGE