

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

**Regular Second Appeal No.4753 of 2016 (O&M)  
Date of Decision: 27.09.2016**

**Amarjit Dass**

**.....Appellant**

**Vs**

**Pritam Dass and another**

**....Respondents**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present:Mr. K.S. Chahal, Advocate  
for the appellant.

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**RAJ MOHAN SINGH, J**

**CM No.12284-C of 2016**

For the reasons mentioned in the application, delay of 2 days in filing the appeal is condoned.

Application stands disposed of.

**Main case**

[1]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff filed a suit for permanent injunction seeking to restrain the defendants from raising further construction over public passage bearing *Khasra* No.2694/18/0-2(2 *biswas*) as shown in red colour marked as 'ABCD' in the site plan. Mandatory injunction was also sought seeking issuance of

directions to the defendants for demolishing the construction raised over the public passage and to restore the public passage to its original condition.

[3]. Plaintiff alleged that he was a *bona fide* resident of village Kakra, Tehsil and District Sangrur. Gram Panchayat was the owner of *Khasra* No.2694/18 and the same was recorded to be Rasta Shrae-aam in the revenue record. The defendants with all evil design merged the public passage in their house by raising construction over the same. Defendants also intended to raise further construction on the second floor over the said passage.

[4]. The suit was contested by the defendants. Defendants pleaded that plaintiff had suppressed the actual facts from the Court and has not come to the Court with clean hands. Defendants pleaded that there are two *khasra* numbers i.e. 2694/18/0-2 owned by Gram Panchayat. There is another *khasra* No.2694/18/1-0 owned by Mohinder Dass and others. Plaintiff has no concern with the aforesaid *khasra* number owned by Mohinder Dass. Allegation of merger of any part of passage in the house of the defendants was denied.

[5]. After pleadings of the parties, both the parties went to trial on the following issues:-

- “1. *Whether the plaintiff is entitled to the relief for permanent injunction, as prayed? OPP*
2. *Whether the plaintiff is entitled to the relief of mandatory injunction, as prayed for?OPP*
3. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
4. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
5. *Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court? OPD*
6. *Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. After appraisal of the evidence, issue Nos.1 and 2 were taken up together and suit of the plaintiff was dismissed by the trial Court vide judgment and decree dated 09.10.2014. Plaintiff remained unsuccessful in appeal before the lower Appellate Court whereby the appeal preferred by him was dismissed with costs vide judgment and decree dated 06.05.2016.

[8]. I have heard learned counsel for the appellant.

[9]. Evidently, it was noticed by the trial Court that from the documents viz. Aksh Latha, jamabandi (Ex.P-2), copy of *Khasra girdawari* for the year 2006 to 2010 (Ex.P-3), site plan (Ex.P-4),

copy of *masavi* (Ex.P-5) and copy of certificate allegedly issued by Jasvir Kaur, Sarpanch that there was no encroachment by the defendants over any passage. The certificate issued by the Sarpanch was to the effect that khasra No.2694/16, 2694/17 and 2694/18 were the *gair mumkin rasta* owned by the Panchayat and were encroached upon by Narain Dass and Pritam Dass (defendants). The said document could not be proved and only remained as a mark document on record. The authenticity of such document was not established by leading any evidence.

[10]. The plaintiff himself appeared in support of his case, however in cross-examination, he admitted that his house was situated within *lal lakir* and pleaded ignorance about *khasra* number of his house. The witness admitted that the streets were being managed by the Gram Panchayat and he did not know about *Aks Latha*. The site plan was got prepared by him about 4/5 months back and he did not know about mentioning of *khasra* number therein. The draftsman examined as PW-2 in his cross-examination could not tell about the measurement of passage reflected in mark document 'A to B'. The witness could not point out the house of various persons shown in the site plan viz-a-viz. *khasra* numbers. Site Plan Ex.P-4 could not demonstrate the factum of encroachment by anyone on any

land. The statement of the plaintiff himself as PW-1 coupled with documents viz. Ex.P-1 to Ex.P-4 on record could not pin point the dimension of the passage alleged to have been encroached by the defendant.

[11]. The identity of the property could not be established by any cogent evidence and in the absence of such evidence, in considered opinion of this Court, the findings recorded by both the Courts below dismissing the suit cannot be faulted with. Plaintiff was to stand on the strength of his own case. Plaintiff could not prove the identity of the property with the help of necessary evidence on record. The evidence led by the plaintiff was discrepant to locate the property and to prove the alleged encroachment by the defendants.

[12]. No law point worth consideration could be brought to the notice of the Court. Even otherwise, the questions as framed in para 2 of the grounds of appeal by learned counsel for the appellant do not arise for consideration at the hands of this Court. Since the findings have been recorded with regard to identification of the property that the evidence was totally insufficient to identify the nature of encroachment by the defendants, therefore, questions as framed does not arise at all.

[13]. Plaintiff himself could not pin point the boundaries of

the passage and could not prove the identification of the property. For want of length, breadth and demarcation of the property, no injunction could have been granted, much less mandatory injunction. The evidence led by the plaintiff viz. PW-2 and documents adduced on record were not sufficient to point out the measurement of the passage reflected from mark 'A to B', numbers of house existing therein in the site plan, existence of any *khasra* number viz-a-viz. houses in question and the nature of encroachment done over the site as per site plan Ex.P-4. The evidence on record could not spell out anything in respect of alleged encroachment, therefore, question as framed in respect of alleged encroachment over public street and removal thereof cannot be gone into for want of sufficient evidence on record.

[14]. In view of above, in my considered opinion, both the Courts below have correctly appreciated the evidence on record in dismissing the suit. No re-appreciation can be done in Regular Second Appeal. Consequently, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

September 27, 2016

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)  
JUDGE**

Yes / No

Yes / No