

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4531 of 2015 (O&M)
Date of Decision-11.01.2016

Het Ram

... Appellant

Versus

Jagdish

... Respondent

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

Present: Mr. P.R. Yadav, Advocate for the appellant.

RAJ MOHAN SINGH, J.

CM No.10862-C of 2015

For the reasons mentioned in the application, delay of 202 days in re-filing the appeal is condoned.

Application stands disposed of.

CM No.10863-C of 2015

For the reasons mentioned in the application, delay of 7 days in filing the appeal is condoned.

Application stands disposed of.

RSA No.4531 of 2015

[1]. Plaintiff is in regular second appeal in a suit for permanent injunction.

[2]. Plaintiff filed a suit for prohibitory injunction seeking a decree to the effect that defendant be restrained from opening gate/window, parnala etc. towards the chowk of the plaintiff left by him in the house bearing

Ahata No.50, Ghar No.64 and Guwada, Ahata No.53 as per *jamabandi Bandobast Samvat* 1932 and the portion of chowk has been shown in red colour in the site plan attached with the plaint.

[3]. Plaintiff alleged that he is owner in possession of house bearing Ahata No.50 and one Guwada bearing No.53. Plaintiff had left some portion opened in the shape of chowk which is in red colour in the site plan and is bounded by specific dimensions. Plaintiff further alleged that the chowk has been left by him from his own land and for his own purpose to which defendant has no concern whatsoever and defendant wants to open his door, window, parnala etc. forcibly towards this chowk which he cannot do so in law.

[4]. Defendant contested the suit on all counts. Defendant has alleged that there is a CC road for Harijan Basti and that road is *rasta sare aam* leading to Harijan Basti and towards eastern and western side of this road the houses of plaintiff and defendant as well as of other persons are situated. CC road has been constructed by the Gram Panchayat in the year 1986-87 and the same is being used for public thoroughfare. Defendant has opened his door towards CC road besides opening window of another room. Plaintiff wants to close the door and window of defendant towards CC road forcibly under the garb of the present suit. Plaintiff cannot claim the property to be his private property as this is a public street leading to Harijan Basti and Panchayat has constructed this street in 1986-87.

[5]. After filing replication, following issues were framed by the trial Court:-

“1. Whether the plaintiff is owner in possession of the property in question, as prayed for? OPP

2. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

3. Whether plaintiff has no locus standi to file the present suit? OPD

4. Whether the present suit is not maintainable? OPD

5. Whether plaintiff has not come in the Court with clean hands and concealed true and material facts from the Court? OPD

6. Relief.”

[6]. Parties led their respective evidence to prove their case. Trial Court discussed issues No.1 and 2 together and held the same against the plaintiff. After returning findings on issues No.3 to 5, suit was dismissed vide judgment and decree dated 04.04.2012 passed by Additional Civil Judge, Senior Division, Narnaul. Plaintiff remained unsuccessful in first appeal before the Lower Appellate Court which was dismissed by the Lower Appellate Court vide judgment and decree dated 26.08.2014.

[7]. Learned counsel for the appellant has formulated following substantial questions of law in the grounds of appeal:-

“1. Whether admission by way of slip in oral statement contrary to documentary evidence be taken as conclusive proof of title?

2. Whether the Ld. Courts below have not at all considered Khasra Paimaish Ex.P2 and site plan Ex.P4 which proves that there is no passage between the house of the plaintiff and defendant?

3. Whether from the report Ex.DW5/A and site plan Ex.DW5/B of Local Commissioner is sufficient that the disputed chowk is a common passage?

4. Whether the Ld. Courts below have only considered selective evidence which favoured the defendant and not the complete evidence to give correct judicial finding?

5. Whether the opening of doors towards house of the appellant by defendant can be allowed by way of prescription when it is an admitted fact that in the old wall of the defendant there was no such doors or windows towards the house of the appellant-plaintiff?

6. Whether evidence as a whole is to be considered while determining the issues?

7. Whether the Ld. Courts below have committed a grave error of law while discarding the documentary evidence and laying emphasis on oral evidence?

8. Whether the judgments and decrees passed by the Ld. Courts below are result of misreading and non-reading of evidence?

9. Whether the judgments and decrees passed by the Ld. Courts below are non-speaking and the same are liable to be set aside?"

[8]. I have considered the arguments of learned counsel for the appellant.

[9]. Plaintiff approached the Civil Court with a specific plea that the disputed portion shown in red colour is a part and parcel of his house bearing Ahata No.50, Ghar No.64 and Guwada No.63 as per *Jamabandi Samvat* 1932 and he has tendered khasra premises in this record. Perusal of khasra premises Ex.P2 revealed that Ahata No.50, Ghar No.64 was owned and possessed by Ganga Bishan son of Ram Dhan. Relationship of the plaintiff with that of Ganga Bishan has not come forth. No pedigree table has been produced on record to connect the plaintiff with that of Ganga Bishan or Ram Dhan in any manner. Plaintiff has not mentioned the configuration of his house viz-a-viz length and breadth so as to connect the disputed red portion with that of the house of the plaintiff. Even the

photograph produced by the plaintiff in lieu of site in question shows that a drain passes through this portion besides the wall of the house of the defendant. There is no gate affixed by the plaintiff towards the opening and towards south side so as to claim it exclusively, rather site goes towards northern side so as to connect it with the Harijan Basti and this site is proved to be constructed by Panchayat by way of CC construction.

[10]. Non-installation of gate by the plaintiff and leaving it open for the public to use frequently without any obstruction, pacca construction by the Panchayat as thoroughfare connecting Harijan Basti towards northern side gives rise to such a conclusion that the property in question is not an exclusive property rather it is being used by public at large in the form of thoroughfare connected to the Harijan Basti towards northern side.

[11]. The site plan Ex.P1 produced by the plaintiff is proved to be wrong as per Local Commissioner who had visited the site and prepared his own site plan. The factum of this gali leading to Harijan Basti is an admitted fact but according to plaintiff he has left this gali himself for going to Harijan Basti. The alleged portion of the plaintiff is not proved in the light of site plan Ex.P1 as well as averments made by him in the plaint. Local Commissioner appeared as DW 5 to prove site plan depicting the true picture existing on the spot. The disputed portion starts from point 'PD' in the site plan prepared by the Local Commissioner and after travelling upto the distance of point 'HG' the gali takes right turn and thereafter, it takes left turn and merges into Harijan Basti where houses of Matadeen and Chajju Ram are situated.

[12]. The site in question is proved to be part of public thoroughfare meant for ingress and egress by public at large so as to lead to Harijan

Basti. The oral evidence of the witnesses could not prove the site to be part of house of the plaintiff, rather property is proved to be *rasta sare aam*. The Statement of DW-6 Chhote Lal who is Ex-Sarpanch is relevant to be quoted in the present controversy wherein he has deposed that disputed portion in between the houses of the plaintiff and defendant is a *rasta sare aam* which was made pacca by the Panchayat by laying RCC in the year 1996 by utilizing funds of the Gram Panchayat. Though RCC pacca road has not been denied by the plaintiff, rather he claimed that he himself made this rasta pacca from his own fund. The portion of the plaintiff if admitted would prove his case contrary to the pleaded case. If the disputed property is presumed to be part of house of the plaintiff then there is no fencing himself by the plaintiff nor any gate was installed towards southern side touching to the brick line road. On one hand, plaintiff has claimed that he made the site pacca of his own and on the other hand non-installation of gate is claimed to be the result of his poverty. Plaintiff has contradicted his own stand.

[13]. Learned counsel for the appellant has relied upon statement of Jai Dayal son of Matadeen DW 2 who in his cross examination has admitted that towards south of house of Jagdish there is common passage and his door and windows opened in this passage. The witness has admitted that no door or window of Jagdish opened towards Het Ram. The witness has further admitted that from the rasta upto Harijan Basti there exists plot of Het Ram and it is correct that there is a chabutra in front of house of Het Ram and there is pacca chowk constructed upto the house of Het Ram. It is correct that prior to raising new construction Jagdish had constructed an old wall and there was no door or window towards the house of Het Ram. Perusal of site plan prepared by the Local

Commissioner shows that Het Ram has left some portion towards this gali and points W-1, G-1 and W-2 in this old wall and thereafter, some area after the drain has been left. Even if there is no door or gate installed by Jagdish towards the gali in question, it does not give right to plaintiff to restrain the defendant from opening such door and window in a public street to which defendant has equal right of enjoyment. The statement of Jai Dayal DW-1 cannot be read to mean that the suit land exclusively owned and possessed by the plaintiff. It is an established fact on record that CC road for Harijan Basti has been constructed and the suit land is a *rasta sare aam*. The plot of the plaintiff is situated toward north of house of the defendant as well as towards west side of house of the defendant. Existence of CC road has been denied by the plaintiff but at the same time he claimed it to have been constructed by himself for leading towards Harijan Basti. Towards east and west, houses of plaintiff and defendant are situated. As per the site plan prepared by the Local commissioner, there are openings shown from the house of defendant towards this gali *sare aam*. Since the civil cases are to be decided on the basis of preponderance of probability and evidence, therefore, the findings recorded by both the Courts below in the light of evidence on record cannot be faulted with on the basis of contradictory evidence of the plaintiff.

[14]. Question No.1 does not arise at all. Question No.2 has been answered inasmuch as that khasra premises does not depict the relationship of the plaintiff with that of Ganga Bishan or Ram Dhan and therefore, such evidence cannot be looked into in favour of plaintiff. Since the gali has been made pacca by laying RCC and arrangement by the Gram Panchayat which is an admitted fact on record, therefore, no amount of khasra inspection or site plan can prove the fact to be otherwise.

Question No.3 has to be answered in-affirmation as the Local Commissioner after visiting the spot has shown the factual position in the report as well as in the site plan showing the disputed portion to be a common passage leading towards Harijan Basti. Question No.4 is not a question of law much less substantial question of law. Question No.5 is a question of fact only. Question No.6 is a question of fact and is not a question of law much less substantial question of law. As regard to question No.7, findings recorded by the Courts below are correct appreciation of evidence. There is no error of appreciation committed by the Courts below in respect of documentary evidence. With regard to question No.8, both the Courts passed the judgments and decrees concurrently after proper reading of the evidence. The impugned judgments and decrees are not the result of misreading of evidence in any manner. The judgments and decrees are not non-speaking and this question does not form a question of law much less substantial question of law.

[11]. Having deliberated upon the questions and evidence on record, this Court finds that no interference can be made in the judgments and decrees passed by the Courts below. Consequently, this appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

11.01.2016
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