

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 5494-C of 2014 &
RSA No. 2276 of 2014

Date of decision: January 20, 2016

Vishnu Vasishta

...APPELLANT

Versus

Aggarwal Vidya Parcharni Sabha, Ballabgarh

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Shiv Kumar, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Faridabad dated 15.11.2011, whereby the suit for permanent injunction restraining the respondent-defendant from interfering or creating obstruction in the construction and completion of boundary wall around the strip of land, fully detailed and described in para-5 of the plaint as well as in the rough site plan marked by letters CDEF and from opening any door or window towards the suit property or the said plot from the Eastern side, filed by the appellant-plaintiff stands dismissed, appeal against which preferred has been dismissed by the Additional District Judge, Faridabad on 11.10.2013.

2. It is the contention of the learned counsel for the appellant that Kothi Kanwar Nawal Singh was gifted to Late Sh. Brijraj Singh, father of the plaintiff, by Kanwar Chander Raj Saran Singh vide document dated 18.01.1961, which was duly registered in the office of the Sub-Registrar on 09.02.1961. In the front side of the Kothi, there were two guard rooms which have since been raised to ground by passage of time. Two suits were filed by Sh. Brijraj Singh, father of the plaintiff, one against Rewati Parshad etc. bearing Civil Suit No. 508 and another Civil Suit No. 722 against Sewak Ram, which were decided on 15.01.1971 by the Court of Sh. R.C.Jain, Sub-Judge. Appeals were preferred and the litigation ended up with the decision by the Supreme Court of India in Civil Appeal No. 3093 of 1982 titled as Brij Raj Singh (now deceased), father of the plaintiff vs. Sewak Ram vide judgment dated 22.04.1999.

3. Thereafter, plaintiff-the father of the appellant filed execution on the basis of the above judgment and the suit property was delivered to him by the Local Commissioner Sh. S.C.Mahna and construction of the wall was started on the suit property but the respondent-defendant on 25.02.2001 along with many students obstructed with the construction work and demolished the wall and the students of the school took away the bricks and also threatened to open the gates of the school towards land in dispute. This led to the filing of the present suit for injunction.

4. He contends that as per the report of the Local Commissioner, the land in question has been handed over to the plaintiff (father of the appellant) by the Local Commissioner in the execution proceedings and, therefore, it belongs to him. It is also stated that the land marked as CDEF in the rough site plan is the ownership of the plaintiff and the respondent is

illegally intending to take possession of this portion of the land. Prayer has, thus, been made that the judgments and decree passed by the Courts below being not in consonance with the pleadings and evidence brought on record cannot sustain especially in the light of the fact that the respondent has failed to produce the *Hibanama* in its favour which would have shown the land which was in their possession.

3. I have heard the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find the submissions to be persuasive enough which would call for interference by this Court in the present appeal.

4. The fact with regard to the filing of the suit and handing over of the disputed suit property in Suit No. 722 titled as Brij Raj Singh (now deceased), father of the plaintiff vs. Sewak Ram by the Local Commissioner Sh. S.C.Manha in the execution proceedings is not in dispute. The dispute is only with regard to the land marked as CDEF in the site plan Ex. P1, which is asserted by the appellant-plaintiff to be a part of Kothi Kanwar Nawal Singh. It is also not in dispute that the document dated 18.01.1961, which was registered on 09.02.1961, describes the property, which was gifted, shown by boundaries and not by the measurement. The principle of law that when there is dispute between measurement and description of the boundaries of the land, which is subject matter of the decree, the boundary shall prevail over the measurement. The onus to prove that the land shown in site plan Ex. P1 marked as CDEF is included within the boundaries, as described in the registered document is on the appellant-plaintiff. The best evidence, which the appellant could have produced showing the portion of the land CDEF to be a part of Kothi Kanwar Nawal Singh, was the site plan,

which was placed in Civil Suit No. 722 in the case titled as Brij Raj Singh vs. Sewak Ram, wherein the portion now in dispute i.e. CDEF would have been depicted to be included in the Kothi. The appellant-plaintiff has failed to place on record the said site plan. The appellant-plaintiff has, therefore, withheld the best evidence by not producing the site plan and thus, adverse inference can be drawn as it is the assertion of the respondent that the said portion CDEF, which is in dispute, is shown to be a part of *rasta shaream* and portion shown in Ex. P1 and the portion ABCD was delivered to the plaintiff by the Local Commissioner in the execution proceedings. It has specifically been stated in the report of the Local Commissioner and depicted in site plan attached with it and it has further been mentioned that the plaintiff had got the base dug up to construct a boundary wall over the portion ABCD. The said report has been placed on record as Ex. PW3/A and the site plan Ex.PW3/B, which was prepared by the Local Commissioner and duly signed by him on 17.02.2001. In view of the above, the Courts have rightly come to a conclusion that the appellant-plaintiff since has withheld the best evidence i.e. the site plan, which was placed in Civil Suit No. 722, is not entitled to the benefit, as prayed for in the present suit as he has not come to the Court with clean hands.

5. As regards the contention of the learned counsel for the appellant that *Hibanama* in favour of the respondent-defendant has not been placed on record by the defendant, hence adverse inference is required to be drawn against him, also cannot be accepted. No doubt, the *Hibanama* has not been placed on record by the respondent-defendant but the claim of the respondent-defendant is that in the northern side of the suit property, there is a strip, which is/was being used by them for ingress and egress. Even the

appellant-plaintiff, in the previous litigation, has considered the suit land as a part of *rasta sareaam* and, therefore, the stand cannot now be changed. Ex. D1, which is the photograph of the site, clearly shows that the gate installed in the wall is an old construction and not a new one and the same was duly proved by DW5 Satya Parkash Mittal, Draftsman, who was examined as a witness in the previous suit No. 114 of 20.10.1982 titled as Brij Raj Singh vs. Rewati Parshad, wherein the gate of the college has been shown in existence.

6. As is apparent from the evidence, which has been brought on record, the appellant-plaintiff, after having been delivered the possession of the portion marked as ABCD on 17.02.2001 by the Local Commissioner in the execution proceedings, changed his mind and has, with a mala-fide intention, approached the Court claiming ownership over the portion of the land CDEF but the same cannot be accepted in the light of the stand, which has been taken in the previous litigation where it is mentioned as *rasta sareaam*. Even the Local Commissioner, in his report Ex. PW3/A and site plan Ex. PW3/B, has stated and shown so. The findings, thus, recorded by the Courts below cannot be faulted with.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

January 20, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**