

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

**R.S.A No. 674 of 2016 (O&M)
Date of decision :11.02.2016**

State of Haryana through Collector, Mewat Nuh and others

..... Appellants

Versus

Mehmood and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vishal Garg, Addl.AG, Haryana
for the appellants.

DARSHAN SINGH,J

CM No. 5199-C of 2015

This application has been filed under Section 5 of the
Limitation Act for condonation of delay of 556 days in filing the appeal.

Heard on the application.

In view of the reasons mentioned in the application, the
application stands allowed and the delay of 556 days in filing the appeal
is hereby condoned.

R.S.A. No. 674 of 2016

The present appeal has been preferred against the judgment
and decree dated 03.05.2014 passed by the learned Additional District
Judge, Mewat, vide which the appeal preferred against the judgment and
decree dated 27.02.2013, passed by the learned Addl.Civil Judge (Sr.
Division), Ferozepur Jhirka, has been decreed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondents no. 1 and 2 have filed suit for permanent injunction restraining the appellants-defendants from encroaching upon the land comprised of Rectangle No. 9 Killa No.25(8-0), rect. No. Killa no.4/3 (8-0), rect. No. 12 Killa No.8 (8-0), 13(8-0), rect. no. 12 Killa No.8(8-0), 24(8-0), 13(9-9) situated within the revenue estate of village Godhuli, Tehsil Punhana, District Mewat. In the alternative, they have prayed for a decree for mandatory injunction directing the defendants to remove the encroachment, if they succeeds to encroach upon the same during the pendency of the suit or if otherwise they are found in possession of the same.

4. As per the case of the plaintiffs-respondents, plaintiff-respondent no.1-Mehmood is owner of the land in dispute detailed and described above. The land in dispute is adjacent to Punhana-Bodikothi road towards south. The defendants intended to encroach upon the same and construct a road and its berms illegally and forcibly without any right. Hence the suit.

5. Appellants-defendants contested the suit on the grounds *inter alia* that road in question was constructed about 40 years back in the presence of plaintiffs and his father with their consent on the public path and public expenses. The road in question has also been repaired time and again and therefore, the plaintiffs have no cause of action to file the present suit. It was further pleaded that the road is now being strengthened and widened within the PWD boundary and no

encroachment was done as alleged.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court on 13.03.2011:-

1. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for?OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
3. Whether plaintiffs have no locus standi or cause of action to file the present suit?OPD
4. Whether the plaintiffs have concealed true and material facts from the Court?OPD
5. Whether the plaintiffs are stopped from filing the present suit by their own action conduct?OPD
6. Whether Civil Court has no jurisdiction to try the present suit? OPD
7. Relief.

7. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiffs, vide impugned judgment and decree dated 27.02.2013.

8. Aggrieved with the aforesaid judgment and decree, the defendants preferred the appeal and the same was dismissed by the learned Additional District Judge, Mewat, vide impugned judgment and decree dated 03.05.2014. Hence this Regular Second Appeal.

9. I have heard Mr. Vishal Garg, learned Addl. Advocate General, for the State of Haryana and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellants contended that it is an admitted fact that the road in dispute is in

existence for the last 40 years. The same was constructed with the consent of the plaintiffs. He further contended that as the road is in existence for the last 40 years, so there is no question of any encroachment of the land of the plaintiffs-respondents and the learned Courts below have wrongly decreed the suit.

11. I have duly considered the aforesaid contentions.

12. Plaintiff-respondent Mehmood while appearing in the witness box has stated that the defendants on the basis of their administrative powers had encroached upon the northern, western portion of the land in dispute in August, 2011 and constructed the road and berms over the same. However, this fact has been denied by Sh. Diwakar Rai, S.D.O, PWD (B&R), Punhana when he stepped into the witness box as DW-1 and stated that the road in dispute was constructed about 40 years back in the presence of the plaintiffs and their father and with their consent. Similar statement has been made by DW-2 Parmod Gautam, Asstt. Managar HSRDC, Gurgaon. However, he admitted that the widening process was going on.

13. Ex.P-3, the copy of Aks Sijra, shows existence of the road from Punhana-Bodikothi. It is evident from the admission of DW-2- Parmod Gautam, Asstt. Manager, HSRDC, Gurgaon that the width of the existing road is being increased from 5 ½ meters to 10 meters. The learned trial Court has appointed Sh. Ramjan Khan, retired Kanungo as local commission, who has submitted his report on 04.09.2012. The report of the local commission is a valuable piece of evidence to elucidate the matter in controversy. No objections have been filed by the

appellants-defendants to the said report of the local commission. The aforesaid report dated 04.09.2012 filed by the local commission shows that the PWD, department by constructing the road has encroached the land of the plaintiffs to the extent of 4K-0M detailed in the site plan of encroachment. It is the admitted case of the appellants-defendants that the widening process of the road was going on. So, there is no escape from the conclusion that while widening the width of the road, the land belonging to the plaintiffs has been encroached upon, for which appellants/defendants have no legal right without acquisition thereof in-accordance with law. So, the concurrent findings arrived at by the learned Courts below requires no interference in the second appeal while exercising the limited powers under Section 100 CPC.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 11, 2016

s.khan

(DARSHAN SINGH)
JUDGE