

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. No. 6238 of 2015 (O&M)
Date of Decision: January 25, 2016**

Ram Chander (deceased) through his LRs and others

... Appellants

Versus

Mai Lal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. Harish Nain, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellants-defendants against the judgment and decree dated 06.03.2012 passed by learned Civil Judge (Junior Division), Hansi, whereby suit filed by the respondents/plaintiffs for prohibitory and mandatory injunction has been decreed, as well as, against the judgment and decree dated 14.10.2015 passed by learned Additional District Judge, Hisar, whereby appeal preferred by the appellants/defendants has been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief

facts relevant for disposal of this second appeal are that plaintiffs filed a suit for prohibitory and mandatory injunction restraining the defendants from interfering into the peaceful possession of the plaintiffs over the residential house constructed on plot comprised in Khasra No. 64//14 which is shown in red colour in the site plan by letters ABCD, situated at Village Budana, Tehsil Narnaund, District Hisar, on the ground that the plaintiffs are permanent residents of Village Budana, Tehsil Narnaund, District Hisar and they are owners in possession of the suit land for the last 60-65 years since the time of their forefathers. Plaintiffs have also taken the electricity connection in the house in dispute. The ration card and voter card of the plaintiffs have also been made in the same house. The main gate of the house of the plaintiffs is installed in the starting at point EF. Some part of the house has been dismantled due to hit tractor trolley. The plaintiffs went to reconstruct that portion of the house near gate. The defendants want to close the gate of the house of plaintiffs. On 09.05.2000, the defendants reached at the spot and threatened the plaintiffs to close the passage in question of the plaintiffs. Plaintiffs requested the defendants several times not to do so, but they are adamant. Hence, suit was filed.

Upon notice, defendants appeared and filed their written statement and took some preliminary objections with regard to locus standi; cause of action, maintainability; estoppel; suppression of material facts, etc. It was averred that the gate of the house of the plaintiffs is not at point EF and the plaintiffs have installed a new gate on the land of the defendants.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. Whether the plaintiffs are entitled for the relief of injunction (prohibitory & mandatory) as prayed for? OPP*
- 2. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD*
- 3. Whether the suit is not maintainable in its present form? OPD*
- 4. Whether the plaintiffs have not come to the court with clean hand and have suppressed the true and material facts from the court? OPD*
- 5. Whether the suit is barred by limitation? OPD*
- 6. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 06.03.2012. Against that, defendants preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 14.10.2015. Hence, this second appeal.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 12 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the finding recorded by Courts below are perverse to the evidence adduced therein?*
- ii) Whether the finding recorded by the Courts below are based upon misreading/non-reading of material evidence?*
- iii) Whether lower appellate Court being final Court on facts are bound to give the findings issue-wise?*
- iv) Whether in view of the facts and evidence on record the appellants/plaintiffs are entitled for the relief claimed?*
- v) Whether the courts below have totally misread and misconstrued the evidence on the file and has failed to consider the material evidence on the file and thus has*

committed serious illegality?

- vi) *Whether the copy of masavi Ex.D5 is the only relevant revenue documents to show the current position at the spot?*
- vii) *Whether merely marking of a document as an exhibit dispensed with its proof?*

Learned counsel for the appellants contended that the impugned judgments and decrees passed by both the Courts below are the result of misreading of evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside. Learned counsel further contended that the appellants are in possession of khasra no. 64//13/1. Learned counsel further contended that there is no passage provided.

I have considered the contentions raised by learned counsel for the appellants and perused the record.

Both the Courts below, after appreciating the evidence on record, have recorded findings of fact with regard to the existence of passage. The Court of first instance recorded the following findings:-

“10. After hearing ld. Counsel for both parties and perusing the record very carefully I have reached to a conclusion that gate exists at point EF as shown in site plan Ex.P2. A perusal of jamabandi for the year 2001-02 (Ex.P1) shows that plaintiffs are owners of khasra no. 64//14, in Ex.P2 gate is shown existing at point EF. Perusal of site plan Ex.P2 shows that the passage comes straight in front of the gate and it is adjacent to the land of defendants. A perusal of Aks-sizra Ex.P3 also shows that in the aks-sizra the public passage marked in red colour is coming in front of the gate in question

and before taking a turn it extends up to the point of gate. Perusal of masavi Ex.P4 also shows that in this document also the public passage is coming straight up to the point of gate. In photographs Ex.P6, Ex.P7 and Ex.P8 also the passage is there in front of the gate in question and it is adjacent to the land of defendants. Document Ex.P3 Aks-sizra and Ex.P4 masavi are public documents prepared by public servants to which presumption of truth is attached. Combined perusal of site plan Ex.P2, Aks-sizra Ex.P3 and masavi Ex.P4 shows that all these three documents are similar to each other regarding the disputed gate and public passage. Moreover, the photographs Ex.P7 to Ex.P8 speak itself that a passage is there in front of the gate in question. Perusal of jamabandi Ex.D2 shows that gram panchayat is owner of khasra no. 64//13/2. The defendants property 64//13/1 does not extend up to the point of gate rather from aks-sizra Ex.D4 which is document of the defendants it is clear that the land of defendants is triangular in shape and it touches with the land of plaintiffs i.e. khasra no. 64//14 even before the point of gate in question. Thus, there is no doubt at all that gate is existing at point EF which is further supported by the revenue record.”

Said findings have been affirmed by the lower appellate Court.

Concurrent findings of fact have been recorded by both the Courts below. The area in question has been specifically mentioned in the documents i.e. Ex.D3 and D4. Learned counsel for the appellants could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by the learned

counsel for the appellants. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine

January 25, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge