

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.50 of 2014 (O&M)

Date of decision: 12.05.2016

Sunehri Devi

.....Appellant

Vs.

Naresh Kumar and Others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE AMOL RATTAN SINGH.

Present:- Mr.Shery Goel,Advocate,for the appellant.

- (1) To be referred to the Reporters or not?
- (2) Whether the judgment should be reported in the Digest?

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AMOL RATTAN SINGH, J.

This is the second appeal of the defendant, filed by the legal representative of defendant No.1, in a suit filed by plaintiff Naresh Kumar (presently respondent No.1), seeking permanent injunction against late Ram Sarup-defendant No.1, as also against one Kala Ram, brother of Ram Sarup, who is presently arrayed as respondent No.2 in this appeal, also through his son and legal heir.

(2) The plaintiff had filed his suit stating therein that he along with his mother, sister and brother, are owners in possession of land measuring 32 kanal in village Kunjpura, Tehsil and District Karnal, with the suit property fully described in detail in the plaint. It was pleaded that at the time of consolidation of land in the village, on the north west of the plaintiffs' land, adjoining to it, there was other land

in various *khewat* and *khatoni* numbers, owned by one Smt.Devki Bai.

She is stated to have sold the suit land measuring 32 kanals in favour of Hari Singh and Man Singh sons of Munshi Ram, with the plaintiff Naresh Kumar being the son of Hari Singh. Thus, it was contended that the suit land was sold to the father and uncle of the plaintiff vide sale deed dated 01.02.1956. It was contended that in the sale deed it was clearly mentioned that there is a rasta/Gohar, 2 karam in width, towards the northern side of rectangle No.140, Killa numbers 1, 2 and 3 and towards the eastern side of Killa numbers 8 and 3. Hari Singh and Man Singh had been using the said rasta/Gohar for coming and going to the main road, as demarcated in the site plan annexed with the plaint.

After the death of Hari Singh, the plaintiff along with his mother, sisters and brothers was also using the said rasta for ingress and egress to the main road, from the suit land. The suit land was stated to be in the actual cultivating possession of the plaintiff. However, allegedly the defendants were bent upon demolishing the rasta/Gohar forcibly and illegally, depriving the plaintiff from any approach to his field.

It was further pleaded, that on 18.03.2006, the defendants along with some bad elements came to the spot and tried to demolish the rasta forcibly and illegally but could not succeed due to timely intervention of respectable persons of the village. Hence, the suit was

instituted on 21.03.2006.

It needs mention here that the two defendants, i.e. Ram Sarup and Kala, are also shown to be sons of Munshi Ram, i.e. they were the brothers of the father of plaintiff Naresh Kumar.

3. Upon notice being issued, both the defendants appeared and filed their joint written statements, with the usual preliminary objections on non-maintainability, locus-standi etc. On merits, it was contended that the plaintiff, his mother, sisters and brothers were not owners in possession of the suit land. As a matter of fact, Devki Bai had sold some land comprised in rectangle No.140, Khasra Nos.1/2 (7 kanals, 140/2 (8 kanals) and 140/3 (8 kanals), to the defendants, through her attorney Bhagwan Singh, vide a registered sale deed dated 23.08.1957. It was further contended that Devki Bai had not sold the suit land to Hari Singh and Mann Singh vide sale deed dated 01.02.1956 and further, that there was no mention in the sale deed of 1956 that there was any *rasta*/Gohar of two karams width running towards the northern side of rectangle No.140, killa No.1,2 and 3 and towards the eastern side of killas number 8 and 3. It was also denied that after the death of Hari Singh, plaintiff and his family members were using the said *rasta* continuously and peacefully for any purpose. All in all, it was contended that the suit land had not come to the share of the plaintiff and he was not in continuous physical possession of it, nor had he any right, title and interest in the *rasta*/Gohar which the defendants had carved out in their own fields,

for their own ingress and egress.

4. Upon a replication having been filed, the following issues were framed by the learned Civil Judge(Jr.Divn.),Karnal:-

“(i) Whether the plaintiff is entitled to a decree for permanent injunction as alleged? OPP.

(ii) Whether the plaintiff has not come to the court with clean hand and has suppressed material facts as alleged ? OPD.

(iii) Relief.”

5. The plaintiff examined 7 witnesses in support of his suit, including himself, whereas defendant No.1, Ram Sarup, examined himself as DW-1. Both sides relied upon certain documents, mainly revenue record, in their favour.

6. Having appraised the evidence, the learned Civil Judge found that the sale deed dated 01.02.1956 had been duly proved by the plaintiff, in which it was clearly recited that there is a rasta/Gohar of two karams width , as described in the plaint. The sale deed was found to be proved on the testimony of Ram Ranga PW-5, who stated that he had translated it into Hindi, vide Ex.PW5/A, the original sale deed being Ex.PW-2/A.

On the other hand, the defendants could not disprove the aforesaid sale deed and further, even in the sale deed dated 23.08.1957, the rasta/Gohar in question was already shown to have been left out by vendor Devki Bai, before selling the land to the defendants. In fact, the defendants did not even produce a copy of the sale deed dated 23.08.1957 and it was in fact the plaintiff who, by

way of additional evidence, proved the said sale deed as Ex.PW6/A, further examining PW-6, Des Raj, a registry Clerk, in support thereof. He had also examined one Bhagwat Parshad, Notary Public, Karnal, who attested the translated copy of the said sale deed of 1957 and proved it as Ex.PW7/A.

Consequently, it was held by the learned Civil Judge, that the plaintiff had proved that there was a rasta/Gohar of two karams width, as described in the site plan annexed with the plaint, which had been sold to the plaintiffs' grand father and his grandfathers' brother, by Devki Bai, as part of the sale deed dated 01.02.1956.

7. The first appeal filed by the legal representatives of defendant No.1 (present appellants), was also dismissed by the learned Additional District Judge, Karnal, on the same aforesaid grounds.

8. It may be noticed that defendant No.2 did not appeal against the judgment and decree and was arrayed as respondent No.2 in the first appeal, as he has now been so arrayed in this second appeal.

It may also be noticed here at this stage, that this appeal had been filed in the year 2014, but had never been argued ever since then, with adjournments being sought by learned counsel one after the other, till this Court, vide order dated 1.04.2016, had made it clear that if the matter was not argued, appropriate orders would be passed even without arguments.

9. Consequently, Mr. Shery Goel, learned counsel for the appellant, appeared and in his arguments, virtually reiterated the stand of the appellant-defendant No.1 as it had been projected before the Courts below. On specific query to him as to how this Court should interfere in a finding of fact, based upon documentary evidence led before the Courts below, learned counsel could not refute the fact that there was no other argument available, other than which had already been rejected by the Courts below.

10. Consequently, there being wholly no question of law involved in this appeal, the findings of the learned Courts below being wholly based on the facts which have not been shown to be perverse in any manner, finding no merit in this appeal, it is dismissed, *in limine*, with no order as to costs.

12.05.2016
anil

(Amol Rattan Singh)
Judge