

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5355 of 2014 (O&M)
Date of Decision : 08.02.2016

Pritam Singh

....Appellant

Versus

Darbara Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gurbhajneek Singh Samra, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-appellant filed suit seeking the relief of permanent injunction to restrain the defendant from opening any gate, window, ventilator or other outlet of his house in the street, shown in the site plan attached with the plaint with blue colour, claiming it as his private street and further relief of mandatory injunction directing the defendant to close outlet, he succeeds in opening towards the street.

2. Both the Courts below discarded the plea of plaintiff-appellant that the street in dispute is his private street. While reaching the above conclusion, the Courts below relied on the testimony of witness of plaintiff, namely; Ajaib Singh PW-2 who has stated that, (i) "street in dispute is thoroughfare and is open from both sides"; (ii) "it is correct that there are underground drain in the street and water of all the houses, except of the defendant, passes through said drain"; and (iii) "it is correct that there are *pucca* bricks in the street and the bricks have been installed and the drain mentioned above has been constructed by the Government through village *panchayat*".

3. Plaintiff while appearing as PW-3 has also admitted that the street was made *pucca* by the *panchayat* but put-forth the defence that the same was made *pucca* in his absence. However, he never moved any complaint in this regard to any authority in writing. He has further admitted that to drain out the waste water of houses in the street there is *pucca* drain. The suit was filed in the year 2009. Plaintiff, while appearing as PW-3, admitted that in the year 1992, he had seen that drains and streets have been made *pucca*. This shows that flooring of bricks was laid more than 16-17 years before filing of the suit. Plaintiff did not produce any cogent and convincing evidence to substantiate his claim that the street in dispute is his private street. He claimed a sale deed in his possession to prove his plea but the same was never produced. In his cross-examination, he had stated that he has been bringing that sale deed earlier and it was lying at his home, which he undertook to produce. Non-production of document, which was in his possession, shatters the claim of plaintiff that disputed street is a private street. On both sides of street there are houses including house of plaintiff. The Courts below have also taken note of the statement of *ex-sarpanch* Joginder Pal Singh, who appeared as DW-2, and stated that the street in dispute is ownership of *panchayat*, which is taking care of it.

4. Learned counsel for the appellant has argued that though, plaintiff has not produced the sale deed in support of his claim as stated by him in his statement but this fact cannot be taken against him to discard his claim that the street in question

is his private. The defendant has not been able to produce any evidence or record of *gram panchayat* to prove that the street in dispute is a public street and the flooring of street was got done by *panchayat* with public money.

5. The above submissions of learned counsel for the appellant cannot be given any weight as onus was on plaintiff, who is seeking relief of injunction to prove his claim by leading cogent and convincing evidence. The lapse, if any, on the part of defendant in producing some witness or evidence, cannot weigh in favour of plaintiff to prove his case. The testimony of witness of plaintiff, PW-2 Ajaib Singh is sufficient to shatter his case that the street in dispute is his private street. A street which is maintained and looked after by public body with public money is a public street and in this case the street in dispute is admittedly a thoroughfare.

6. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

February 08, 2016
jk

(SURINDER GUPTA)
JUDGE