

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. No. 88 of 2014 (O&M)
Date of Decision: February 10, 2016**

Basant Singh

... Appellant

Versus

Jaswant Singh 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. Ram Kumar Saini, Advocate,
for the appellant.**

Paramjeet Singh Dhaliwal, J.

CM-212-C-2014

Having heard learned counsel for the appellant and for the reasons recorded in the civil misc. application, same is allowed. Delay of 86 days in refiling the appeal is condoned.

RSA No. 88 of 2014

This regular second appeal has been preferred by the appellant/plaintiff against the judgment and decree dated 13.09.2011 passed by learned Civil Judge (Junior Division), Faridkot, whereby suit filed by the plaintiff for permanent and mandatory injunction has been dismissed, as well as, against the judgment and decree dated 31.01.2013

passed by learned Additional District Judge, Faridkot whereby appeal preferred by the appellant/plaintiff has also 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 plaintiff filed a suit for permanent and mandatory injunction restraining the defendants from interfering into peaceful possession and use of the path going to the house of the plaintiff shown as JGEC in the site plan attached with the plaint and also directing defendant no.1 to close the gate marked as G2. The plaintiff and defendant no.1 are the real brothers and their houses adjoin each other. The plaintiff through a civil suit had got a decree against defendant no.1 with regard to the path JGEC. Defendant no.1 along with other defendants demolished bricks from point H to G for constructing drain for dirty water and also made gate G2 illegally and forcibly to harass and cause inconvenience to the plaintiff. Hence, suit was filed.

Upon notice, defendants appeared and filed their joint written statement taking preliminary objections regarding maintainability; locus standi; mis-joinder, etc. On merits, it was averred that a written family settlement/partition took place on 12.02.1998 between the plaintiff, defendant no.1 and one brother, namely, Roop Singh, vide which they left the disputed path for their common use and both of them have right to open their gates in the said path. The gate of the defendants was already in

existence before the above said family settlement.

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

- “1. *Whether the plaintiff is entitled for permanent injunction, as prayed for? OPP*
2. *Whether suit of the plaintiff is not maintainable in the present form? OPD*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether suit of the plaintiff is bad for mis-joinder of necessary party? OPD*
5. *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 13.09.2011. Against that, plaintiff preferred an appeal, which has also been dismissed by the learned lower appellate Court vide judgment and decree dated 31.01.2013. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 7 of grounds of appeal, arise for consideration in this second appeal:-

- “i) *Whether the successors of a person are bound by judgment and decree when their predecessor was party to the suit?*
- ii) *Whether the findings of learned courts below are perverse and contrary to evidence on the file?*
- iii) *Whether grave and manifest injustice has been done to the appellant?”*

Learned counsel for the appellant contended that both the

courts below have erred in holding that the appellant has not placed on record copy of the judgment and decree dated 02.09.1987 whereas the copy of the same has been placed on record as Ex.A-1 and A-2, by way of additional evidence before the lower appellate Court. 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.

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

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

“13. The entire case of the plaintiff is based upon judgment and decree dated 2.9.1987 but he has not placed on record copies of the said judgment and decree on the judicial file for the reasons best known to him. So adverse inference has to be drawn against the plaintiff/appellant for withholding best evidence. Perusal of the trial court file reveals that the plaintiff examined Gurdip Singh Ex. Sarpanch as PW2 but failed to produce him for cross examination. So his statement cannot be read. As such there is solitary statement of the plaintiff. In his examination in chief by way of affidavit Ex.PW1/A, he has not mentioned even a word about the family settlement dated 10.5.1984 but stated that the decree dated 2.9.1987 was passed in his favour and against his father and brother, but has not disclosed the particulars and details of that suit. Matter has been made clear by him in the opening line of his cross examination wherein he stated that it is correct that he had not filed any such against Jaswant Singh present defendant. Appellant has not produced any

document on record showing his possession over the passage in dispute. A person who does not come to the court with clean hands is not entitled to the discretionary relief of injunction.

14. During the pendency of the appeal the appellant, by way of additional evidence has brought on record copy of judgment, Ex.A1 and decree Ex.A2 dated 2.9.1987 passed in Civil Suit No. 220 dated 3.5.1986. Even the present respondents were not party to that suit. As such judgment Ex.A1 and decree Ex.A2 are not binding upon the respondents. Exclusive possession of the plaintiff/appellant over the passage in dispute cannot be said to be proved from these documents. As such appellant cannot derive any benefit from these documents.

15. There is force in the contention of the respondents is that a family settlement took place between the parties on 12.2.1998 in presence of witnesses and in that partition disputed path/street was left by the parties for their common use and that both the parties have right to open their gates in the said street/path and have also right to fix their respective doors as the said family partition/writing has been proved on record by the defendants as Ex.D2 through the statement of Prashan Singh, a witness to the same, defendant himself and Kewal Krishan. Respondents have also brought on record writing deed dated 10.5.1984 vide Ex.D3. Plaintiff Basant Singh while appearing as PW1 has admitted his signatures on the said partition dated 12.2.1998 Ex.D2 and writing dated 10.5.1984. But during his cross examination he tried to say that his signatures have been obtained by Shamsher Singh fraudulently. But there is no evidence on the record that he has taken any action against Shamsher Singh for obtaining his signatures fraudulent. Plaintiff cannot deny the contents of Exs. D2 and D3.

From the above said evidence the only conclusion that can be drawn is that the learned trial Court rendered reasoned finding while dismissing the suit of the plaintiff and the judgment of the learned trial Court does not call for any interference. Hence the appeal in hand stands dismissed being without any merit.....”

The learned lower appellate Court has affirmed the findings recorded by the trial Court.

Concurrent findings of fact have been recorded by both the Courts below. Learned counsel for the appellant 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 a 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 appellant. 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

February 10, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge