

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

**RSA No.1464 of 2010 (O&M)
Decided on: 25.10.2017**

Suresh Kumar and others

.....Appellants

versus

Ram Kishan and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.S. Dadwal, Advocate for
Mr. Aman Chaudhary, Advocate
for the appellants.

Mr. VS Kaajla, Advocate
for respondent No.1.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the plaintiffs against the judgment and decree passed by the lower Appellate Court; whereby the decree passed by the trial Court in their favour was reversed and their suit was ordered to be dismissed.

For convenience, the parties would be referred herein as the plaintiff and the defendants as they are described in the original suit.

The brief facts of the case are that the plaintiffs filed a suit for injunction restraining the defendants from dismantling the common stairs between the shops of the plaintiffs and the defendants and further directing

him to maintain the status quo regarding stairs. Still further, the mandatory injunction was prayed for directing the defendant to remove the constructions raised on the common stairs.

The facts as pleaded in the plaint are that the plaintiffs are the owner in possession of shop Nos.38, 39, 40 and 42 situated in Karan Market, Karnal. Defendants are owners in the possession of the shop No.41 in Karan Market, Karnal, fully described the suit plaint.

It was further averred that the shop Nos.36 to 45 are situated in one line and are in the southern side of the public street and the shops were allotted through auctioned by the Improvement Trust, Karnal in the year of 1971-72. It was further averred that as per the site plan of the Improvement Trust, Karnal; in relation to Karan Market, the staircase in question was shown in red colour, to be as common staircase for the use of the plaintiffs, defendants and other co-shop owners of shop Nos. 36 to 45 and none of the shop owner was given exclusive rights over the stairs.

It was further averred that the defendant has illegally raised construction/Mumty over the stairs in question; in spite of the request and representation of plaintiffs and other shopkeepers; with intention to grab the staircase and to restrain the other shop owners from using the same.

It was still further pleaded that defendant were bent upon annexing the stairs in question, forcibly and illegally, into the shop No.41, which was purchased by them from the Improvement Trust. It was claimed that the defendants have got no right, title or interest to dismantle, demolish or alter the structure of staircase.

On notice, the defendants appeared and filed written statement taking the preliminary objections that the plaintiffs have no locus standi to

file and maintain the present suit. On merits, it was claimed that the site plan and the boundaries mentioned by the plaintiffs are totally incorrect.

It was further pleaded that the staircase in question exists in the shop No.41; being exclusively owned by the defendants. The other pleadings of the plaintiffs were also denied.

It was further claimed in the written statement that, previously, the shops were constructed and allotted by Improvement Trust. But open verandah was left uncovered in front of the shops. But later on the competent authorities gave sanction to the respective shopkeepers/owners to cover that verandah which was situated in front of their respective shops, after making payment to the Improvement Trust for the cost of land of verandah.

It was further averred that in pursuance to this policy of the Improvement Trust; most of the shopkeepers covered the said verandah by purchasing the same from the Improvement Trust. It was claimed that the defendants had also made payment for purchasing the verandah in front of their shop. It was further claimed that the sale deed and the site plan have been attached with the written statement to show that the stairs and the land in front of the same, comprised in verandah, have also been included in the property sold to the defendants.

Hence, the exclusive right over the stairs was claimed by the defendants. It was further claimed that the other shopkeepers in the market have already constructed their first floors on their respective shops and have also constructed the stairs for their exclusive use in their own shops. Still further, it was claimed that the defendants had applied to the Improvement Trust, Karnal for sanctioning of the site plan for construction of the first floor over shop No.41 and in that also the stairs have been shown as part and

parcel of the said property of shop No.41. The site plan was duly sanctioned by the Improvement Trust, Karnal and only thereafter the shop was constructed by the defendants.

It was further claimed that the defendants were allotted an area of 120.25 square feet by the Improvement Trust, Karnal vide sale deed and only that much area is in existence in their shop, which includes the staircase as well. The defendants further claimed that they are in possession of only an area of 120.25 square feet and not even a single inch over and above whatever has been sold to them. Therefore, the prayer was made for dismissal of the suit.

Parties led their evidence.

After appreciating the respective case of the parties, the trial Court decreed the suit filed by the plaintiffs. The necessary injunction was issued and a direction was issued to the defendants to remove the newly constructed shuttering on the Mumty; as claimed by the plaintiff. Aggrieved against this judgment and decree, the defendants filed appeal before the lower Appellate Court.

The lower Appellate Court reversed the judgment and decree passed by the trial Court. While allowing the appeal, the lower Appellate Court recorded that it has been proved on record that the area of staircase has been purchased by the defendants. If the plaintiffs had any grievance against that transfer of the area of staircase in favour of the defendants then they should have challenged the sale deed in favour of the defendants and should have made the Improvement Trust, Karnal as a party in the suit. Still further, a finding has been recorded that, admittedly, the shopkeepers/owners of shop Nos.36 to 45 had already purchased the space of the verandah in

front of their shops, by paying extra money. The plaintiffs and defendants have also purchased the verandah in front of their respective shops.

Hence, it was recorded that unless the plaintiff could show that the land of verandah could not have been sold by the Improvement Trust, Karnal, under the rules, the sale in favour of the defendants qua the land of verandah cannot be declared to be null and void. Hence, the defendants are purchaser of the land of verandah which is a valid purchase. It has been further recorded by the lower Appellate Court that the appellants/plaintiffs could not distinguish the ownership of verandah and the ownership of staircase. Hence, the staircase will remain appurtenant to the land of verandah and shall follow the ownership of the land of verandah.

Having heard learned counsel for the parties, this Court is of the considered view that the lower Appellate Court has not committed any illegality or perversity in recording the findings, as mentioned above. As per the record, the plaintiffs have failed to prove the nature of the staircase to be a property meant for common use.

On the other hand, the sale deed executed by the Improvement Trust in favour of the defendants shows the area sold to them as a composite unit including the area of the staircase involved in the suit. Therefore, the ownership of the staircase has been transferred to the defendants through a validly executed sale deed. The sale deed has not even been questioned by the appellants/plaintiffs in the suit. Even otherwise, at the time of arguments both the counsel admit that the staircase falls within the building line of the shop of the defendants. Therefore, even going by the common sense, it would lead to an inference that the staircase is not a common staircase.

No other argument was raised by learned counsel for the

appellant.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

October 25, 2017

sahil soni

(RAJBIR SEHRAWAT)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No