

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-2763-2010(O&M)

Date of Decision:29.08.2017

Sardari Lal Sharma

.....Appellant

Versus

Krishan Joshi and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Veneet Sharma, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 25.01.2007 and his first appeal was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 24.11.2009, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that case of the plaintiff-appellant before the learned trial court, as per his pleadings, was that he filed suit for permanent injunction restraining the defendants from interfering in lawful possession of the plaintiff in property No.76-A, fully detailed in the head note of the plaint, alleging that Daulat Ram son of Mathra Dass was owner of huge land forming part of Khasra Nos.826/164

measuring 156 sq. yards was sold by said Daulat Ram in favour of Smt.Urmila Rani wife of the plaintiff on 8.12.1967 for a valuable consideration and put her in actual physical possession. It was provided in the sale deed that towards North plaintiff's predecessor shall leave one and half feet wide strip as unbuilt. Smt.Urmila Rani transferred her right, title and interest in the suit property vide registered gift deed dated 3.9.1970 in favour of the plaintiff and the plaintiff set up a bungalow thereon. The construction of which was commenced in the year 1970 and completed in the year 1974. The plaintiff was residing therein. The plaintiff was homeopathic practitioner and in 1976 got his address changed to 76-A, Gopal Nagar-IV, Amritsar and was in uninterrupted possession of the bungalow. There was a property belonging to late Sh.Karam Chand Joshi, stated to had been inherited by the defendants, situated at the back of the property of the plaintiff. The defendants, by taking undue advantage of recital in the sale deed regarding leaving one and half feet wide strip by the predecessor of the plaintiff, were unnecessarily trying to exploit the situation. The said clause was inconsistent with the absolute title vesting on the strength of the sale deed in Urmila Rani and, thereafter, in the plaintiff. The plaintiff had provided a passage to his own property and for ventilation to his structure had left a passage on his own land towards northern portion of the plot, on which plaintiff opened windows and ventilators. The passage is towards Gali No.4 and was enclosed by iron gate, affixed within the pillars of plaintiff's land. The possession of the plaintiff was continuous since 1967 as tacked with that of her predecessor had otherwise perfected into title and defects, if any, attempted to be pointed out by the defendants stands cured by lapse of time, vesting in the plaintiff right of sole and

absolute ownership in 76-A, Gopal Nagar-IV, Amritsar, on the strength of title accompanied by continuous adverse, hostile and uninterrupted possession since 8.12.1967. The defendants had set up their residential bungalow on plot No.6 at the back of property of the plaintiff. The said plot abuts in Gali No.3 and the defendants have an access therefrom. They had built up front portion of their plot and the back portion of their plot maintained by them as a lawn is accessible from the front built up portion. Due to hike in the prices of the property, the intentions of the defendants had turned dishonest. They started unlawfully, illegally and unsuccessfully claiming right of approach to their plot from plot/property No.76-A, which they had no right to do. A Daily Diary Report No.10 of 21.2.1997 was recorded by defendant No.2 with Police Station Majitha, Amritsar, on false ground and finding her report to be false, no action was taken by the police. The defendants again attempted to trespass in the property of the plaintiff by mounting steel gate and jumping over to plaintiff's property for going to their property on the backside, which the defendants had no right to do. The defendants repeatedly threatened to do so and if succeeded in their mission, the plaintiff shall suffer an irreparable loss and injury. The request of the plaintiff was not accepted by the defendants.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?OPP*
- 2. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD*

3. *Relief.*”

In order to prove their respective pleaded cases, both the parties brought on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has miserably failed to prove his case for want of cogent and sufficient evidence. Accordingly, suit of the plaintiff for permanent injunction was dismissed by the learned trial court vide its impugned judgment and decree dated 25.01.2007. Feeling aggrieved, plaintiff filed his first appeal which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 24.11.2009. Hence, this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record and common case of both the parties to this unwarranted litigation that one Sh. Daulat Ram was the vendor of both the parties. Smt.Urmila Rani wife of the plaintiff-appellant purchased a piece of land measuring 156 square yards vide sale-deed Ex.P1 from Sh.Daulat Ram. There was a clear recital in the said sale-deed that the vendee will leave 1½ feet wide area towards north side. Exactly similar was the recital in the sale-deed Ex.D1, whereby same vendor Sh.Daulat Ram sold a plot in favour of the defendants. Later on Smt.Urmila Rani suffered a gift-deed in favour of her husband-plaintiff-appellant herein. It is the said gift-deed on the basis of which the plaintiff has drawn his title.

The abovesaid recital contained in the sale-deed had never been challenged by the vendee Smt.Urmila Rani. Once the plaintiff accepted the gift-deed on the basis of abovesaid sale-deed Ex.P1, he was bound by the

recital contained in the sale-deed as well. However, later on, plaintiff had a second thought and tried to wriggle out of the abovesaid recital contained in the sale-deed Ex.P1. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

A combined reading of both the impugned judgments and decrees passed by both the learned courts below will make it crystal clear that there was a street measuring 3 feet wide, out of which 1½ feet wide area was left by the predecessor-in-interest of the plaintiff and remaining area of 1½ feet was left by the defendants. There was no inconsistency in this regard. Further, the area which would be so left by both the parties to this litigation would be used by themselves and by none else. However, it seems that the plaintiff turned greedy and tried to ignore the abovesaid recital in the sale-deed Ex.P1 which was not permissible.

It is so said because Smt.Urmila Rani could not have passed on title of any larger area than in her own absolute ownership. This was the natural outcome of the gift-deed executed by Smt.Urmila Rani in favour of her husband plaintiff-appellant. It seems that the plaintiff had encroached upon said area of 1½ feet. This was the reason that the plaintiff took the plea of adverse possession also which was not even available to him. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first

appellate court has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned Additional District Judge in para 16 of his impugned judgment, which deserve to be noticed here, read as under:-

“Admittedly, the sale deed Ex.P1 was executed by Daulat Ram in favour of Urmila Rani, wife of the plaintiff and the sale deed, the copy of which is Ex.D1, was also executed by Daulat Ram in favour of Karam Chand Joshi. The khasra numbers mentioned in the sale deed are 826/164 and 827/164. The sale deed Ex.P1 is regarding plot measuring 156 sq. yards out of these khasra numbers. The sale deed Ex.D1 of the defendants is also from khasra Nos.826 and 827/164 regarding plot No.6, which is 23' 2” towards North and South and is 13' 9” towards East and 13' 4” towards West. The plot number of the plaintiff is No.4 having length of 70' and width of 20'. It is the case of the plaintiff that Daulat Ram was owner of huge land. Out of which land, Urmila Rani, wife of the plaintiff, purchased the property measuring 156 sq. yards. The defendants also purchased the property from Daulat Ram, mentioning the plot number and specific dimensions of the property in both these sale deeds clearly show that from the huge chunk of property, Daulat Ram carved out plots and sold the same to the plaintiff and defendants and, obviously, to some other persons. In the sale deed Ex.P1, there is a clear recital that towards north side, there is a street measuring 3' wide, out of which one and half feet wide area shall be left by the vendee i.e. Smt.Urmila Rani and one and half feet area will be left by the other side. In the sale deed Ex.D1, it again has clearly been mentioned that there is a common passage towards southern side. The plaintiff has pleaded that the recital regarding leaving one

and half feet area appearing in the sale deed is inconsistent with the absolute title, vesting on the strength of sale deed in favour of Urmila Rani and, thereafter, on the strength of registered gift deed in favour of plaintiff and the plaintiff is sole and absolute owner by way of adverse possession also, but the plaintiff filed simpliciter suit for permanent injunction without seeking declaration regarding alleged inconsistency of the clause appearing in the sale deed and without seeking his adverse possession, having been matured in the ownership. The recital, appearing in the sale deed regarding leaving one and half feet passage by the other party and recital, appearing in the sale deed of the defendants about existence of passage clearly proves that the passage in dispute is in existence since the purchase of respective properties by the parties to the lis. The findings of the learned trial court that both the parties have been using it jointly have correctly been returned. The plaintiff got the property from Urmila Rani by way of gift deed. Urmila Rani purchased the property by way of sale deed. The incumbrances have, thus, been transferred in favour of the plaintiff. The plaintiff is bound by the terms of sale deed regarding leaving passage to the extent of one and half feet out of the purchased property, because the same rights and liabilities have been devolved upon the plaintiff by virtue of gift deed in his favour. There is nothing on record to suggest that the condition is inconsistent or is having no binding effect. Rather, the plaintiff without any right is claiming the other one and half feet part of the passage ought to be left by the other party and by doing so tried to oust the right of the defendants. The vendees from the same khasra numbers and same vendor, being co-owner, the plaintiff cannot seek his title on the basis of adverse possession without specifically proving the ouster of the defendants and without seeking declaration to that effect. Similarly, a co-

owner cannot seek injunction against the co-owner in joint possession. Moreover, the plea of adverse possession can only be used as a shield. The plaintiff could not establish the ouster of the defendants from the passage in dispute in order to claim his title by way of adverse possession. The evidence, brought by parties, clearly reveal that the passage is joint. Both the plaintiff and defendants are having ½ share in 3' passage. Merely because the defendants have their main opening gate towards street No.3 or that the defendants have got the lawn towards passage in dispute does not create any right in the plaintiff or extinguishes right of the defendants. The plaintiff, thus, could not establish his exclusive possession and right on the passage in dispute. Thus, the findings on issue No.1 of the learned trial court are affirmed. There is nothing on record to suggest that the defendants are estopped by their act and conduct. The findings of learned trial court on issue No.2 are also affirmed.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure.

In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

August 29, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No

**CM-8368-C-2010 in
RSA-2763-2010**

**Sardari Lal Sharma
Versus
Krishan Joshi and another**

Present: Mr.Veneet Sharma, Advocate,
for the applicant-appellant.

Applicant seeks condonation of delay of 2 days in filing the
appeal.

After hearing the learned counsel for the applicant-appellant,
instant application is allowed, for the reasons stated therein. Delay of 2
days in filing the appeal is condoned.

C.M. stands disposed of.

August 29, 2017
seema

**(RAMESHWAR SINGH MALIK)
JUDGE**