

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

**RSA No.1264 of 2016
Date of Decision: 18.07.2017**

Anoop Kumar and others

.....Appellants

Vs.

Sanjeev Dutta and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Liaqat Ali, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

Plaintiffs/appellants have come up in appeal against the judgment of trial Court dated 11.07.2013 and also the judgment of lower appellate Court dated 06.11.2015 whereby suit for permanent injunction, restraining the defendants from blocking/putting any lock on the gate and obstructing and interfering in passage/entrance marked ABCD shown in the site plan attached has been dismissed.

Brief facts of the case are that plaintiffs have averred in the plaint that they are owners in possession of the property shown blue in the site plan and exclusive owners of the passage shown red in the site plan. The same was purchased by them vide registered sale deed dated 03.12.1991 from Sh.Guru Parkash Dutta and the site plan attached with the said sale deed was also part and parcel of the sale deed, which shows the passage in dispute and same was part and parcel of the property purchased by the plaintiffs. As per the agreement dated 03.08.1970, property No.B-VIII/18-1024, fell to the share of Sh.Guru Parkash Dutta, Property No.1023 fell to the share of Dr.GurDev Dutt, father of the defendant No.1 and husband of

defendant No.2 and passage/entrance marked ABCD fell to the share of said Sh.Gur Parkash Dutta and since then the plaintiffs were using the said passage/entrance without any kind of hindrance and interference and defendants have no right or concern with the same. On 27.09.1996 defendant alongwith some other persons came to the suit property and tried to block the passage ABCD by putting lock on it but due to timely intervention they could not succeed and thereafter they threatened for doing so. However, during the pendency of the suit they had taken the forcible possession of the passage and put their lock on the gate of the passage/entrance, which they have no right to do so. Hence, the present suit.

Upon notice, defendants appeared and filed written statement taking the preliminary objection that present suit was not maintainable in the present form, suit was barred on act and conduct of the plaintiffs. On merits it was submitted that there was a separate way from the street to the property of the plaintiffs, which was being used as a way and entrance since 1954 for the portion which was purchased by the plaintiffs. The sale deed executed by the earlier owner only with respect to the portion on the backside of the property of the plaintiffs, which had got entrance from the street and the earlier owner also used that entrance since 1954. Plaintiffs have purchased vide registered sale deed dated 03.12.1991 only the property No.BVIII/18-1024 and they were in possession of this property. There is no sale deed or document of transfer of title regarding the disputed portion was ever executed by any previous owner in favour of the plaintiffs, as such, they were not owners of the disputed portion. It was further stated that originally the property No.B-VIII/18-1023 and property No.B-VIII/18-1024 now 105,

defendant No.2 and grandfather of defendant No.1. In the year 1954, Ram Kishan, divested himself of the property and equally partitioned the abovesaid property between two sons Sh.Guru Dev Dutta and Sh.Guru Parkash Dutta and they both are in possession of their respective portions since then and all the legal heirs of Sh.Ram Kishan reached an agreement dated 03.08.1970 in front of the Executive Magistrate, Jalandhar that the portion given to Sh.Guru Dev Dutta known as B-VIII/18-1023 which was in his possession since 1954 in the shape of shops in the front portion of the building and the first story on the shops shall be owned and possessed by Sh.Guru Dev Dutta as an absolute owner and no one shall claim any right, title or interest in the said property. The other portion bearing No.B-VIII/18-1024 which was in possession of Sh.Guru Parkash Dutta was given to him and other legal heirs of Sh.Ram Kishan relinquished their shares in his favour and since then Guru Parkash Dutta was using the entrance from street side to his building and he was never in possession to say of ownership of the disputed portion in this case. Hence, the plaintiffs who have come into picture after the sale of the property to them from Guru Parkash Dutta cannot claim any property, which was owned and possessed by the legal heirs of Guru Dev Dutta Since 1954. The alleged passage was not a passage but the shop in possession of the defendants, which came to them from Guru Dev Dutta never claimed any interest or right in that shop. On 04.03.1997 and 27.08.2004, following issues along with additional issues were framed.

1. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP.
- 1(a) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ? OPP

2. Whether suit was not maintainable in the present form ?OPD.
3. Whether plaintiff I barred by his act and conduct from filing of this suit? OPD.
4. Whether the plaintiff has no come to the Court with clean hands? OPD.
5. Relief.

The issues No.1 and 1(a) have been taken up together being interconnected and in order to avoid repetition. The admitted facts were that Ram Kishan was original owner and during his life time, the property was partitioned between his two sons namely Gurdev Dutta and Guru Parkash Dutta and written agreement in this regard was also executed on 03.08.1970. It was further admitted by both the parties that portion No.B-VIII/18-S-1023 had came into the share of Guru Dev Dutta and portion No.B-VIII/18-S-1024 came into the share of Guru Parkash Dutta vide agreement dated 03.08.1970. It was further admitted by the defendant that portion No.B-VIII/18-S-1024 was purchased by the plaintiffs vide registered sale deed dated 03.12.1991 from Guru Parkash Dutta. The only dispute with regard to the portion ABCD described in the site plan attached with the plaint which was Ex.5. As per sale deed dated 03.12.1991, the plaintiffs had purchased property bearing No.B-VIII/18-S-1024, total area 10 marlas 139 Sq.feet measuring 47 X 47 with boundaries as East-Gali, west-House of Bant Ram, North-portion of Guru Dev Dutta property bearing No.B-VIII/18-S-1023, South-Abadi Court Bahadur Khan. The total area 10 marlas 139 Sq.feet and measurements 47 X 47 comes into exactly 2209 Sq.feet. In the sale deed dated 03.12.1991, there was nothing mentioned regarding existence of any passage. As per sale deed there was no common wall in the northern side of

the property of the plaintiffs and there was no explanation as to why the plaintiffs mentioned this fact in the sale deed that there was a common wall on the northern side of their property. If there would be any passage on the northern side, then the same would have been described in the sale deed.

Learned trial Court had dismissed the suit and learned appellate Court has affirmed the findings of the trial Court and held that after going through the sale deed 03.12.1991 (Ex.P1), measurement and boundaries of the property purchased by plaintiffs by above sale deed reveals that the disputed property stated to be entrance/passage was not sold by Guru Parkash Dutta, in favour of plaintiffs. The total area, 10 marla 139 Sq.Ft. and measurement 47' X 47' comes to exactly 2209 Sq.Ft. and it falsify the version of the plaintiffs that disputed portion was sold to them vide above said deed. The learned trial Court had rightly observed that the sale deed executed in favour of plaintiffs was a sufficient document to clinch the entire matter in controversy and the plaintiffs had failed to establish that they were owner in possession of the portion ABCD (Ex.P-5). Even Sanjeev Dutta and others filed a civil suit against Guru Parkash Dutta, for permanent injunction restraining him from interfering with their peaceful possession and enjoyment on the property bearing No.B-VIII/18-1023 now 105 Brandrath Road, Jalandhar and Guru Parkash Dutta, filed a counter claim. The suit as well as counter claim, were dismissed by the Court the then Civil Judge (Jr.Divn.) Jalandhar, vide judgment and decree dated 07.10.2005. The appeal filed against this judgment by Sanjeev Dutta and Smt.Ajit Dutta was allowed and appeal filed by Guru Parkash Dutta was dismissed by the Court of learned Additional District Judge, Jalandhar vide judgment and decree dated 07.10.2006 i.e. Ex.DX/1 and Ex.DX/2 respectively. So, it further

falsify the version of the plaintiffs with regard to their claim over the portion marked ABCD. As such, the plaintiffs were not entitled to the decree of permanent injunction and mandatory injunction as prayed for. The findings of the trial Court on issues No.1 and 1-A were based on correct appreciation of evidence on record and same were thus affirmed.

So in the light of the discussion, no substantial question of law is arising out and the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the prayer made by the appellants by way of present regular second stands dismissed.

(RITU BAHRI)
JUDGE

18.07.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No