

RSA No. 2106 of 2015 (O&M)

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

RSA No. 2106 of 2015 (O&M)

Date of Decision: 12.9.2017

Jagdish Chander

.....Appellant

Vs.

Updesh Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.K. Shukla, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for permanent injunction filed by the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 21.11.2013 and first appeal filed by the defendant was dismissed by the learned first appellate court, vide its impugned judgment and decree dated 24.5.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 3 of the impugned judgment, are that respondent-defendant filed civil suit for permanent injunction against the appellant with the

RSA No. 2106 of 2015 (O&M)

averments to the effect that the respondent was owner of land, inhabitant and khewatdar of village Dadheri Teshil Amloh Distt. Fatehgarh Sahib. The suit property was Gair mumkin passage and land of the respondent adjoined the same. The passage in dispute was of three karams in width. The respondent had been using the passage in dispute to approach his land since immemorial time. The appellant had no concern or connection with the passage. The appellant was threatening to interfere in the use of the passage by the respondent and to encroach upon the same. The respondent requested the appellant to admit his claim but of no avail and the final refusal of the appellant to accede the lawful claim of the respondent, constrained him to file the said civil suit.

Having been served, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleading of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is entitled to permanent injunction as prayed? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiff has not come to the court with clean hands? OPD
4. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. Since the defendant-appellant did not conclude his evidence in time, it was closed by order dated 17.10.2013 passed by the learned trial court, which was never challenged by the appellant. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved his

RSA No. 2106 of 2015 (O&M)

case, by bringing on record cogent and convincing evidence. Accordingly, his suit for permanent injunction, was decreed by the learned trial court, vide its impugned judgment and decree dated 21.11.2013.

Feeling aggrieved, defendant filed his first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 24.5.2014. Hence this regular second appeal at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

It has been duly established on record that passage in question was recorded as common passage in the jamabandi for the year 2007-08 (Ex.P1). This common passage vested in the Gram Panchayat of the village. Width of this passage was 11 feet, as admitted by Smt. Raj Rani-wife of the appellant. This passage was in existence since 1954-55. Appellant had also been using this passage. Its width as well as existence was also corroborated by another piece of evidence in the form of Masavi (Ex.P3). It was also admitted by the appellant himself that he had no connection or concern with the passage in question. Having said that, this Court feels no hesitation to conclude that the suit for permanent injunction filed by the plaintiff was rightly decreed by the learned courts below and the impugned judgments and decrees deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 9 and 10 of its impugned judgment, which deserve to be noticed here, read as under:-

“The onus to prove the issue no.1 was placed on respondent. The respondent Updesh Singh while leading evidence examined PW-1 Sadhu Singh, who vide his affidavit Ex.PW1/A corroborated the case of respondent. Then the respondent himself stepped in witness box as PW-2 and vide affidavit Ex.PW2/A reiterated the stand taken by the respondent vide main suit filed against the appellant in verbatim. The respondent then closed evidence by bringing copy Ex.P1 of jamabandi for the year 2007-08, copy Ex.P2 of jamabandi for the year 2007-08, copies Ex.P3 and Ex.P4 of Musavi in the same. The appellant Jagdish Chander on the other himself stepped into witness box as DW1 and vide affidavit Ex.DW1/A deposed with regard to the case set up in the written statement filed by the appellant to contest the suit of the respondent apart from referring copy Ex.D-1 of site plan. Then DW-2 Raj Rani examined by the appellant vide affidavit Ex.DW2/A corroborated the entire case of appellant apart from referring copy Ex.D-1 of site plan and copy Ex.D-2 of jamabandi for the year 1997-98. Thereafter DW-3 Sewa Singh draftsman vide his affidavit Ex.DW3/A deposed with regard to site plan Ex.D1 of passage in dispute prepared by him after visiting the spot. The appellant could not conclude his evidence because the same was closed by order dated 17.10.2013. The respondent thereafter closed rebuttal evidence.

The record, after hearing arguments with regard the grounds of appeals as per rival oral as well as documentary evidence, referred above, has been perused and it is found that the grounds of appeal taken the appellant for filing the appeal are almost as per stands taken in written statements filed by the appellant to contest the suit of the respondent and are raised during the course of arguments apart from raising another plea that the passage in question was leading up to the main gate of the house of the appellant whereas the land of the respondent was adjoining to the house of appellant and as such respondent

RSA No. 2106 of 2015 (O&M)

had no right to use the passage in question. The Gram Panchayat, as per next ground taken by appellant, had also no concern or connection with the passage in question. Now the question arises as to whether the said grounds taken by appellant referred briefly herein above are sustainable or not for the purpose of which, it has become imperative to go through rival oral and documentary evidence led on record by the parties. The perusal of copy Ex.P-1 of jamabandi for the year 2007-2008 goes to reveal that the suit property is owned by Gram Panchayat of village Dadheri and is passage (rasta shar-e-am) for all the villagers. The passage in dispute as admitted by respondent is in existence since 1954-55 and is to the extent of 11 feet in width also admitted by Raj Rani wife of the appellant. The appellant admittedly used to place the cots in the passage in dispute of 11 feet in width also shown in copy Ex.P-3 of musavi brought on record by the respondent. The appellant admitted that he had no concern or connection with the passage in question and could not interfere in the same and resulting of which, the contention of learned counsel for the appellant is not sustainable from any angle and resulting of which, the finding rendered by the learned trial court with regard to the main issue are affirmed as such against the appellant.”

The only argument raised by the learned counsel for the appellant was that under the garb of suit for permanent injunction, plaintiff wanted to encroach upon the private passage owned by the defendant-appellant. Had it been so, there was no difficulty with the defendant-appellant in filing his counter-claim, however, he did not do so and that too, for no good reasons. The only passage in question in the instant litigation was the common passage which was 11 feet wide and was in existence right from 1954-55. It was so recorded in the latest jamabandi for the year 2007-08 (Ex.P-7) and was also corroborated by Masavi.

RSA No. 2106 of 2015 (O&M)

Further, as per the provisions of law contained in Section 44 of the Punjab Land Revenue Act, presumption of truth is attached to the revenue entries, it would be jamabandi for the year 2007-08, in the present case. Defendant-appellant did not bring on record any contrary evidence, so as to rebut this presumption of truth attached with the revenue entry. Under these undisputed facts and circumstance 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.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. Harish Chander and others Vs. Ghisa Ram and another, 1981 (1) SCC 431

2. Ram Avadh and others Vs. Ram Dass and others, 2008(8) SCC 58

3. Khiali Ram and another Vs. Sant Lal, 1972 PLJ 118 (P&H)

4. Gunit Sidhu and another Vs. Bhai Shaminder Singh (since deceased), 2009(3) RCR (Civil) 648 (P&H)

5. RSA No.5578 of 2015 (Gurbachan Singh and others Vs. Sarban Singh @ Surat Singh and others), decided on 7.3.2017 (P&H).

6. RSA No. 6669 of 2016 (Gram Panchayat through its Sarpanch Vs BD&PO Ganaur and others)

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is

RSA No. 2106 of 2015 (O&M)

sine qua non for entertaining a 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 law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

12.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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