

RSA No. 3699 of 2016 (O&M)
RSA No. 3706 of 2016 (O&M)

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

RSA No. 3699 of 2016 (O&M)
Date of Decision: 2.8.2017

Darshan Singh

.....Appellant

Vs.

Bachittar Singh and others

.....Respondents

RSA No. 3706 of 2016 (O&M)

Darshan Singh

.....Appellant

Vs.

Mohan Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Jagjit Gill, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

These two regular second appeals are being decided together, as both the appeals are directed against the same impugned judgment passed by the learned first appellate court and also arising out of the same set of facts. However, for the facility of reference, facts are being culled out from RSA No. 3699 of 2016.

In RSA No. 3699 of 2016, plaintiff is in regular second appeal

RSA No. 3699 of 2016 (O&M)
RSA No. 3706 of 2016 (O&M)

against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for permanent injunction, restraining the defendants from diminishing the width of the street, was dismissed by the learned trial court vide its impugned judgment and decree dated 24.4.2013 and it was upheld by the learned first appellate court, while dismissing first appeal of the plaintiff, vide impugned judgment and decree dated 7.4.2016.

In second appeal, i.e. RSA No. 3706 of 2016, appellant-Darshan Singh was defendant No.1 in a suit for mandatory and permanent injunction, which was partly decreed by the learned trial court vide impugned judgment and decree dated 25.2.2014 and first appeal of defendant No.1 was dismissed by the learned first appellate court vide same impugned judgment and decree dated 7.4.2016.

Brief facts of the case, as noticed by learned first appellate court in para 2 and 3 of its impugned judgment, are that parties to the suit were residents of village Arniwala Sheikh Subhan. The house of plaintiff was marked as ABCD and a public street measuring 12 feet in width led to the house of plaintiff, passing in front of houses of other inhabitants of said locality. There was a vacant plot of father of the defendants adjoining to it. The said street was running for the last more than 50 years. Earlier Mohan Singh, father of defendants, filed a suit for permanent injunction against the present plaintiff and others with a malafide intention to include the site of street in question and claiming the street to be his ownership, which was pending. Now the defendants were adamant to diminish the width of the street in question and to create blockage/hurdles in the said street. The defendants had also collected the bricks etc. at the spot and vide application dated 19.12.2010 moved by the plaintiff to the police, the defendants were restrained but they were bent upon to do the abovesaid mischief again. They

RSA No. 3699 of 2016 (O&M)
RSA No. 3706 of 2016 (O&M)

were repeatedly asked by the plaintiff not to diminish the width of the street and not to put any hurdle/hindrance/obstruction in the street in question in any manner but to no effect.

The suit of the plaintiff was contested by the defendants by filing joint written statement taking preliminary objections to the effect that the plaintiff was guilty of concealment of patent and material facts from the court. Plaintiff had got no cause of action or locus standi to file the present suit. Suit was bad for the mis-joinder and non-joinder for necessary parties. The defendants challenged the maintainability of the present suit under the principles of res judicata, as previously defendant No.4 Mohan Singh, who was father of defendants No. 1 to 3, had filed a suit for permanent injunction titled as Mohan Singh Vs Nishan Singh, seeking a restraint order against the defendant for not making illegal interference in the house owned and possessed by the plaintiff.

Defendant No.3 also attached site plan of the house with boundaries and showing the street having its width 5 ft. Nishan Singh, defendant of said suit contested the suit and same was decreed vide judgment and decree dated 08.02.1993 and the said Judgment and decree had attained finality as no appeal was filed against that judgment and decree. The plaintiff, who alleged that he had purchased part of property from Nishan Singh, could not have the better title which Nishan Singh had. The suit has been filed as a counter blast to the suit titled as Mohan Singh Vs Darshan Singh etc. filed by the defendants for mandatory injunction. On merits, it was submitted that the width of the street was 5 feet not 12 feet. The plaintiff illegally and forcibly wanted to carve out a passage through the plot of defendant No. 4 and demolish the boundary wall with the purpose to increase width of the passage/street from 5 feet to 12 feet. In the end, a

prayer for dismissal of the present suit was made.

On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether the plaintiff has got no cause of action or locus standi to file the present suit against the defendants? OPD
3. Whether plaintiff suit is not maintainable? OPD
4. Whether suit is bad for non joinder and mis joinder of necessary parties? OPD
5. Whether the plaintiff is estopped from filling the present suit against the defendant by his own act and conduct? OPD
6. Relief.

With a view to prove their respective pleaded case, both the parties produced documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff-Darshan Singh has failed to prove his case, by leading cogent and convincing evidence. Accordingly, his suit for permanent injunction was dismissed vide impugned judgment and decree dated 24.4.2013. Similarly, suit for mandatory injunction and permanent injunction filed by plaintiff-respondent No.1-Mohan Singh in RSA No. 3706 of 2016, directing defendants-Darshan Singh etc. not to construct a wall through plot of the plaintiff-Mohan Singh, was partly decreed by the learned trial court, vide its impugned judgment and decree dated 25.2.2014.

Appellant-Darshan Singh filed two appeals against the abovesaid judgments and decrees passed by the learned trial court. Both the appeal came to be dismissed by the learned first appellate court vide same

RSA No. 3699 of 2016 (O&M)
RSA No. 3706 of 2016 (O&M)

impugned judgment and decree dated 7.4.2016. Hence these two regular second appeals.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees will make it crystal clear that appellant had no case right from the day one either on facts or in law. He failed to prove his pleaded case. Entire case of the plaintiff-appellant was that street in question was a public street. However, he did not bring any relevant evidence on record, so as to prove that street in question was a public street. Further, it was a matter of record that at an earlier point of time, civil suit No. 4771 of 1992 was filed by Mohan Singh-respondent qua this very street and said suit was decreed vide judgment and decree dated 8.2.1993 (Ex.D1). Site plan attached with said suit was Ex.D2. It was this relevant and cogent evidence which rightly proved to be a clincher against the plaintiff-Darshan Singh. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Appellant being plaintiff, onus was on him to prove his pleaded case, however, he failed to do so. On the other hand, as noticed hereinabove, defendants brought on record cogent and convincing evidence. Appellant-plaintiff failed to prove the street in question as public street. Even the Gram Panchayat was not impleaded as one of the party-defendants. Nothing was brought on record, so as to prove the street in question as public street. Had it been a public street, it would have been vested in the Gram Panchayat. Plaintiff-appellant did not implead Gram Panchayat as party-defendant, for the reasons best known to him. Under these undisputed facts and circumstances, it can be safely concluded that the learned courts

RSA No. 3699 of 2016 (O&M)
RSA No. 3706 of 2016 (O&M)

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 view that has been taken by this Court also finds support from the following judgments of this Court as well as other High Courts:-

Municipal Corporation of Ludhiana Vs. Oswal Spinning and Weaving Mills Ltd. 1991 PLJ 480 (P&H)

Lakhbir Singh Vs. Mewa Singh, 2002 (1) RCR (civil) 662 (P&H)

Narendra through Lrs Smt. Indubai and others Vs. Atul Kumar and another, 2009 (1) CivCC 644 (Bombay High Court)

Before arriving at a judicious conclusion, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant and cogent findings recorded by learned first appellate court in para 20 to 22 of its impugned judgment, which deserve to be noticed here, read as under:-

“For the aforesaid reasons, the contention raised on behalf of the appellants is ordered to be rejected and it is hereby held that the Judgment passed by the Civil court of a competent jurisdiction is relevant so far as the question of width of street in question is concerned.

The next contention raised on behalf of the appellants that the street in question has wrongly been held to be a private street is against factual position, does not hold any ground. No evidence has been led on file on behalf of the plaintiff proving that the street in question is a public street. In order to prove the street in question to be a public street, record from the office of village Gram Panchayat could have been proved on file but the plaintiff has not even proved Aks Shajra proving the existence of any public street at the spot. Hence, I do not find any illegality or infirmity in the Judgment passed by the learned Lower Court while holding the street in question to be a private street.

Since it has been proved on file that the street in

RSA No. 3699 of 2016 (O&M)
RSA No. 3706 of 2016 (O&M)

question is only five feet wide at the spot, as such, the relief of injunction, restraining the defendants from diminishing the width of the street has rightly been declined by the learned Lower Court. Finding no merits, in the both appeals i.e. Darshan Singh Versus Bachittar Singh and Darshan Singh Vs. Mohan Singh, the same are ordered to be dismissed.....”

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 rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is 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 judgments of 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 both these appeals are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

2.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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