

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

RSA No.2509 of 2015

Date of Decision: 09.05.2017

Surinder Singh

....Appellant

Versus

Kinda

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Dinesh Nagar, Advocate
for the appellant.

DAYA CHAUDHARY, J.

The present Regular Second Appeal has been filed by plaintiff/appellant-Surinder Singh after loosing his case before two Courts below.

Briefly, the facts of the case are that the plaintiff-appellant filed a suit for permanent injunction restraining the defendant-respondent from encroaching upon the property, in dispute. As per pleadings in the plaint, the plaintiff purchased the suit property measuring 9 marlas 8 sarsahis vide sale deed dated 27.05.1967 with specific boundaries. It was also mentioned in the plaint that the street shown in the site plan was meant for the purpose of ingress and egress of the plaintiff to the suit property which was being used since 1967, however, there was threat of encroachment upon the land, in dispute and obstruction from the hands of defendant. Said suit was dismissed vide judgment and decree dated 24.09.2013.

Aggrieved by aforesaid judgment and decree, the appeal was

filed by the plaintiff-appellant but the same was also dismissed vide judgment dated 12.11.2014 by Additional District and Sessions Judge, SBS Nagar.

The present appeal has been filed by the plaintiff-appellant to challenge the judgments/decrees passed by the trial Court as well as by the lower Appellate Court.

Learned counsel for the appellant submits that both the Courts below have not properly appreciated oral as well documentary evidence, whereas, the street, in dispute was being used by the plaintiff for his ingress and egress and not as a personal property of defendant-respondent since long. Learned counsel also submits that the case of plaintiff-appellant was proved by the statement of plaintiff as well as other two witnesses, namely. Ashok Kumar and Draftsman-Baldev Singh. At the end, learned counsel for the appellant submits that the findings recorded by both the Courts below are not based on proper appreciation of evidence led by the plaintiff-appellant and as such, both the judgments and decrees passed by the trial Court as well as lower Appellate Court are liable to be set aside.

Heard the arguments of learned counsel for the appellant and have also perused the findings recorded by both the Courts below.

Facts relating to filing of suit; filing of written statement and thereafter, dismissal of suit as well as of appeal are not disputed.

The following issues were framed by the trial Court :-

- “ 1. Whether plaintiff is entitled to permanent injunction as prayed for ? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*
- 3. Relief.”*

The findings recorded by the trial Court, are reproduced as under :-

“ I have heard the rival contentions and have perused the record carefully. Plaintiff in his cross-examination has admitted the correctness of site plain produced by the defendant which is Ex.D5. Plaintiff has brought on record certified copy of judgment dated 14.11.2011 Ex.P2 but the property which was the suit property in the said case was nowhere reflected in the site plan produced on record by the plaintiff. The plaintiff has alleged that the suit property is a public rasta but neither plaintiff nor any of his witnesses has brought on record any application made to the village Panchayat against the defendant for encroaching/blocking a public street returning. Apart from bald statement made by PW-2 there is nothing else on record which proves that the passage in dispute is a public passage. The best option available to the plaintiff was to bring on record of the village Panchayat about the same but plaintiff chose not to examine any lambardar/sarpanch/panch to prove the same neither was any application ever made the plaintiff to obtain any such record. Thus plaintiff has failed to prove on record that the suit property marked in colour red in the site plain is a public street. Thus this issue is decided against the plaintiff and in favour of the defendant.”

Similarly, the findings recorded by the lower Appellate Court are reproduced as under :-

“ First of all, the cross examination of the plaintiff is necessary to be perused. In his cross examination, he has admitted that the site plan attached by him shows the walls and the doors, which were affixed at the time of the preparation of the site plan, which have been shown in the photograph

Ex.D1. He also admitted that hand pump, khurli, wall and the trees of the defendant are depicting in the photograph Ex.D2, which are existing on the spot. The plaintiff has admitted in his cross examination that there was no door from his own house towards the street. He also admitted that he did not check the ownership record of the southern side from the persons from whom he purchased the plot in question and he did not verify even from the Gram Panchayat record as to who is the owner of the side on the southern side. He also admitted that the Panchayat did not make the said Gali pucca on the southern side in his presence. He also admitted that a street goes in front of the house of Kinda, which has been shown in the site plan Ex.D5, which is reflected in Ex.D5 and goes in the end. He also admitted that earlier he had litigation with Surinder Singh son of Rattna regarding the construction of the house. Lastly he even admitted that there is no other street for approaching the plot of the defendant, except this one. Now the cross examination of PW2 Ashok Kumar is also to be scrutinized. This witness PW2 Ashok Kumar has seen the photographs Ex.D1 to Ex.D4 and admitted the same to be correct according to the spot and he has also admitted that the same are regarding the subject matter in question. He also saw the site plan relied upon by the defendant and admitted the same to be correct, as per the spot, i.e., Ex.D5. He also admitted that the walls shown in Ex.D1 photograph is still in existence. Further he admitted that now the house of Gholi is situated towards the eastern side of the house of Kinda. Gholi has constructed a new house towards the eastern side of the house of Kinda. He admitted that now Banta has no concern with the property situated towards the eastern side of the house of Gholi.

He admitted that the plaintiff has not shown his plot in the site plan Ex.P1, but he has one plot just near the house Kinda. Here, a doubt is raised upon the site plan relied upon by the plaintiff Ex.P1, which does not seem to be depicting the true position on the record. This witness also admitted that the street which is shown in red colour in site plan Ex.P1, turns towards the southern side from point-AD and the street regarding which he is talking towards the southern side after crossing the house of Kinda. He also stated that he can produce the entire village Gram Panchayat to prove the fact regarding the turning of street to point-AD towards the southern side, which is shown as Ex.D1. Accordingly to him, the half of the street is brick paved by the Gram Panchayat and the half street is kutcha one. He even stated that the defendants are the owner of 4 marlas of property. Khurli, hand pump and trees belonging to the defendants are existing in the street and he never gave any application in writing to the Gram Panchayat against the defendants that the defendants have brick paved the street and have raised construction and have installed a hand pump in the street. Therefore, this witness has admitted photographs and site plan relied upon by the defendants and has even made material admissions in his cross examination. He even admitted that this is the only street approaching to the house of the defendants and there is no other street for their approach. Now the third witness examined by the plaintiff is PW3 Baldev Singh Saini, who has admitted in his cross examination that the approach to all the houses including the property of plaintiff abutting the main street is from the main street only. He also admitted that for approaching the house of defendants, there is only one street, which is shown in yellow and red

colour in the site plain Ex.P1. Therefore, the case of the plaintiff has rather been falsified by the witnesses examined by the plaintiff. Not only this, the defendants have not brought any record of the Gram Panchayat even to prove his case independently. As far as the judgment dated 14.11.2011 Ex.P2 is concerned, the reply of the defendants is that the said litigation between the parties was not regarding the suit property in this case. The perusal of the judgment dated 14.11.2011 Ex.P2 shows that the said appeal arose out of the suit where the dispute was regarding the wall ABCD and it was suit for mandatory injunction and suit for permanent injunction and for raising any type of construction on the plot. Hence, in view of the above said position that the plaintiff has admitted the site plan of the defendants Ex.D5 and the judgment Ex.P2 is not concerning the property in dispute in this case and in view of the fact that no record has been brought by the plaintiff or any of the witness from the village Panchayat against the defendants for encroaching/blocking a public street by the defendants, this court finds that not even any Numberdar, Sarpanch or Panch from the village Panchayat has been examined to prove his case and his own witnesses have falsified his case. Therefore, the sole conclusion that follows is that plaintiff has not been able to stand on his own legs to prove his case against the defendants.

Hence, due to the aforesaid reasons, this Court is unable to detect any flaw in the findings arrived at by the learned trial Court. Therefore, the instant appeal is hereby dismissed with costs. Counsel fee is assessed as ₹ 1,000/-. Decree-sheet in appeal be drawn accordingly. Trial Court record be returned immediately, while appeal file be consigned to the

Record Room."

On perusal of findings recorded by both the Courts below, it is apparent that the plaintiff-appellant could not prove on record as to whether the street, in dispute, is a public passage. Neither any Panch/Sarpanch from the village Gram Panchayat nor any Numberdar was examined. The plaintiff failed to prove on record that the suit property marked in colour red in the site plan was a public street and as such, the issue was decided against the plaintiff and in favour of defendant.

The appellant-plaintiff purchased a plot measuring 9 marlas 8 sarsahis vide sale deed dated 27.05.1967 with specific measurement and boundaries. Plaintiff himself has admitted in his cross-examination that there was no door from his own house towards the street. It has also been admitted that he did not verify even from the Gram Panchayat record as to who was the owner of the land, in dispute, on the southern side. He has also admitted that the Panchayat did not make the said Gali pucca on the southern side in his presence. It has also been admitted that the said street goes in front of the house of defendant which has been shown in the site plan Exhibit D5 and it goes upto the end. It has also been admitted that there is no other street for approaching the plot of the defendant, except the street, in dispute.

The findings recorded by the lower Appellate Court are clear and specific that it was the only street from which the respondent can reach to his house and there is no other street for reaching to his house.

Accordingly, the plaintiff-appellant had failed to prove his case that the defendant has encroached upon the public street nor that land belongs to the plaintiff. Even that has not come on record that any complaint

was made to the Panchayat for his grievance or the matter was brought to the notice of any authority concerned.

Keeping in view the concurrent findings recorded by both the Courts below, no interference is required in the present appeal and as such, the same, being devoid of any merit is hereby dismissed.

However, the appellant is at liberty to avail the appropriate remedy, if available to him.

09.05.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes