

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4006 of 2015
Date of decision:8.8.2017**

Hardeva Ram

...Appellant

Versus

Ajit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Anirudh Kush, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby the suit for mandatory and permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 31.3.2014 and his first appeal was also dismissed by the learned District Judge, vide his impugned judgment and decree dated 5.3.2015.

Brief facts of the case, as noticed by the learned first appellate court in paras 2 and 3 of the impugned judgment, are that the appellant-plaintiff approached the civil court, seeking mandatory injunction, directing defendant No.1 to close the main gate, which had been opened illegally, causing obstruction in the usage and occupation of the plaintiff in his own house No. 1652, B/2, Vishwakarma Colony, Pinjore with consequential relief of permanent injunction, restraining defendant No.1 from interfering in the peaceful, actual possession and enjoyment of rights of usage and

occupation of the premises of the plaintiff in whatever manner.

As per the case of the appellant-plaintiff, he had purchased a vacant plot measuring 2 Biswas for a sale consideration of ₹3,000/- from one Mainawanti, widow of Sunder Dass. After purchasing the said plot, the plaintiff constructed his house over the said plot in the year 1983. Defendant No.2 also purchased the plot measuring 3 Biswas from one Mayawanti, widow of Harbans Lal and constructed his house and opened main gate in the back side of the house, which had been shown as Mark D by yellow colour in the site plan attached with the plaint. The gates of other occupants namely, J.P. Gupta, Kulbhushan, Gurnam and Avtar Singh also opens in this street. On 18.11.1996, defendant No.2 sold his house to Veer Bhan Singla, father of defendant No.1. The gate of house of defendant No.1 was at Mark D lying in the street shown in the site plan. However, father of defendant No.1 was intending to renovate his house by way of constructing the first floor of the house and he requested the plaintiff to allow him to open a minor entry in the street towards the house of the plaintiff. The plaintiff allowed the father of the defendant No.1 to open a gate and placed the building material on the end of the street. However, even after completion of the construction, defendant No.1 and his father did not close the entry and defendant No.1 installed a main pucca gate marked by letters 'BC' and shown in red colour in the site plan attached with the plaint. The plaintiff made several requests to defendant No.1 to close the said gate, which had been installed towards the entrance of the house of the plaintiff as it creates hindrance, but defendant No.1 did not pay any heed to such requests.

Having been put to notice, defendants appeared and filed their written statements. Defendant No.1 contested the suit of the plaintiff tooth and nail. However, defendant No.2 did not raise any serious objection to the suit filed by the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP.
2. If issue no.1 is proved, whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for?OPP.
3. Whether the suit is not maintainable in the present form as alleged in the written statement?OPD
4. Whether the suit is bad for non-joinder of necessary parties?
OPD
5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case for want of sufficient and cogent evidence. On the other hand, defendant No.1 brought on record voluminous documentary evidence. Accordingly, suit of the plaintiff for mandatory and permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 31.3.2014. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 5.3.2016. Hence

this second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that defendant No.1 purchased his house and got it repaired after getting the site plan sanctioned from the Municipal Corporation. As per this sanctioned site plan Ex. D-14/A, the gate in question which is the bone of contention between the parties, was very much there existing at the site and the same was being used by respondent/defendant No.1. It is also a matter of record that plaintiff-appellant never challenged the correctness or legality of this sanctioned site plan Ex.D-14/A.

Further, this site plan was duly proved on record by DW-3 Raman Sharma, an official of the Municipal Corporation. In addition to the above, there was other sufficient and cogent documentary as well as oral evidence, which has duly proved the case of defendant No.1. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that the appellant being the plaintiff, onus was on him to prove his case, by leading cogent and sufficient evidence. However, he failed to bring on record any such evidence which may prove his pleaded case. It also goes without saying that exceptions apart, pleadings alone would not be sufficient to decree any suit. In the case in hand, plaintiff-appellant could not substantiate his averments taken in his plaint.

His self serving statement, supported by some other interested

witnesses, would not be sufficient to decree the suit of the plaintiff. The basic hurdle in the way of the plaintiff-appellant was the above-said duly sanctioned site plan Ex.D-14/A, which has been duly proved on record by DW-3 Raman Sharma. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective 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 rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 20 and 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“Not even this, it is also proved on record that the defendant no.1 has purchased the said house and got it repaired after getting the site plan sanctioned from the Municipal Corporation, Panchkula as by that time, the suit property came within the jurisdiction of the Municipal Corporation. Ex.D-14/A is the copy of duly sanctioned site plan, which shows that the gate in question was there and was being used by the respondent-defendant no.1 when he repaired his house. Learned counsel for the appellant-plaintiff has argued that the site plan has not been proved on record, as required and as such, it cannot be read in evidence but there is no force in this plea. DW-3, Raman Sharma, an official of the Municipal Corporation, when appeared in the witness box, has duly proved this site plan and the original site plan was also

produced by the defendant no.1 and shown to DW-3, Raman Sharma. Simply because of the fact that he was not dealing hand and he simply deposed as per the records, it cannot be said that the stand taken by him qua sanction of the site plan, Ex.D-14/A is not well founded especially when existence of the disputed gate is not disputed by the appellant-plaintiff himself. When the appellant-plaintiff was confronted about this aspect, he pleaded his ignorance by saying that he cannot say whether defendant no.1 has repaired and renovated his house after getting the site plan sanctioned from the Municipal Corporation.

Besides this, it is also proved on record that the appellant plaintiff was having dispute with the defendants as he admitted that once the mother of defendant no.1 has lodged complaint against the appellant plaintiff for making encroachments on the public street. It was further admitted by him that some portion of the staircase constructed by him, was demolished by the Municipal Corporation on that complaint. This fact is also proved on record by DW-3, Raman Sharma by proving documents, Ex.D-15, which is attested copy of the application filed by the mother of respondent-defendant no.1 and Ex.D-8, on the basis of which, notice was issued by the Municipal Corporation, copy of which is Ex.D-9 and Ex.D-10, report about encroachment and Ex.D-11, copy of resolution of the Corporation ordering demolition of that encroachment. Thus, it is proved that there was prior animosity between the appellant plaintiff and defendant no.1 as the defendant no.1 has demolished illegal construction on the complaint of mother of respondent-defendant no.1 and that construction was found to be causing nuisance to the respondent defendant. Thus, as argued by the learned counsel for the respondent-defendant no.1, this suit has been filed by the appellant-plaintiff just to

harass the defendant no.1 and to take revenge, fully knowing that the defendant no.1 has every right to use the disputed street and his gate opens towards that street as per duly sanctioned site plan of the Municipal Corporation and he has every right to use that street to approach his house. In these facts and circumstances, the learned lower court has rightly non-suited the appellant-plaintiff and there is nothing on record to interfere with the well reasoned findings recorded by the learned lower court and accordingly, the same are affirmed.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 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 instant appeal is bereft of merit and without any

substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

8.8.2017

mks

(RAMESHWAR SINGH MALIK)

JUDGE

Whether Speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No