

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5633 of 2016 (O&M)

Date of decision: 03.02.2017

Kishore Chand

... Appellant

Vs.

Sohan Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Peeush Gagneja, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgments and decrees passed by the learned Courts below, recording their concurrent findings of facts, decreeing the suit of plaintiff-respondent for permanent injunction, restraining the defendant from demolishing the passage in question, defendant has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned trial Court in para 2 of its impugned judgment, are that the case of the plaintiff was that he along with his brothers was owner in possession of land measuring 7 kanals 6 marlas as fully detailed in the head note of the plaint. It was the case of the plaintiff that there exists a passage starting from points A to B and C as shown in Musavi of the village. It was the only passage which led to the land of the plaintiff and his brothers and the same was shown in the revenue record. It was the case of the plaintiff that the defendant was also having agricultural land at starting point

of the passage and he wanted to demolish the passage in question by encroaching upon the land underneath the passage. For this purpose about a week prior to the filing of the suit, the defendant tried to demolish the passage in question but his attempt was foiled. But the threat was still there.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to the permanent injunction as prayed for?OPP
2. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court? OPD
3. Whether the plaintiff has got no locus standi to file the present suit as the plaintiff has no cause of action?OPD
4. Relief.

In order to prove their respective pleaded case, both the parties led their 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 the plaintiff has duly proved his case. Accordingly, the suit for permanent injunction filed by the plaintiff restraining the defendant from demolishing the only passage going to the fields of the plaintiff, was decreed by the learned trial Court, vide impugned judgment and decree dated 20.11.2013.

Dissatisfied, defendant filed his first appeal, which also came to be

dismissed by the learned First Appellate Court, vide its impugned judgment and decree dated 26.10.2015, upholding the judgment and decree passed by the learned trial Court. Hence this Regular Second Appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that case of the plaintiff-respondent was based on very old revenue record. Plaintiff proved the certified copy of Masavi Ex.P1 and jamabandi for the year 2005-06 as Ex.P2, so as to prove his pleaded case. As per the uncontroverted documentary evidence contained in Ex.P1 and Ex.P2, it was the only passage available to the fields of the plaintiff, which had been shown in the Masavi by points A, B and C. Defendant-appellant wanted to demolish this only passage to the fields of the plaintiff, contending that there was no such passage in the revenue record.

However, defendant-appellant miserably failed to controvert the abovesaid cogent evidence produced by the plaintiff in the form of Ex.P1 and Ex.P2. Defendant did not produce any documentary evidence which might have been found sufficient to controvert the documentary evidence of the plaintiff. The evidence produced by the appellant-defendant was also not found sufficient to prove his pleaded case. On the other hand, plaintiff duly discharged his onus on issue No.1, because of which the suit was rightly decreed by the learned Courts below, thus, the impugned judgments and decrees deserve to be upheld.

Before arriving at just conclusion, learned First Appellate Court reconsidered the facts of the case as well as the evidence available on record, in the correct perspective. The cogent findings recorded by the learned First Appellate Court in para 14 of its impugned judgment, which deserve to be

noticed here, read as under: -

“There is no denying the fact that the plaintiff is co-sharer of the land measuring 7 kanals 6 marlas comprised of Rect. 49, killa No.20(7-6). The plaintiff has produced on record copy of Musavi of the village, perusal of which reveals that there exists a passage at point A to point BC and this is the only passage which leads to the land of the plaintiff falling in Rect. No.49, killa No.20. The defendant failed to rebut the documentary evidence having been produced on record by the plaintiff, rather the defendant in his written statement, has admitted that the copy of Musavi on the record shows the construction of the road/ passage so constructed by the Government at the time of the construction of the link road. Moreover, when the defendant claims himself to be the owner of the passage in dispute, then it was his bounden duty to prove his ownership on the passage in dispute, but he failed to do so. The evidence having been led on behalf of the plaintiff itself is sufficient to substantiate his case. There is nothing substantive on record to dispel the claim of the plaintiff. The plaintiff has proved the existence of the passage in dispute in a substantive manner. Under these circumstances it was incumbent upon the defendant to discard the proved version of the plaintiff, but the evidence having been led on behalf of the defendant in support of his version is deficient. The version of the defendant/appellant in this case is too fragile to base sound foundation of his claim. So, bounden duty of the defendant was that in case he lays his claim over the property

in dispute then he could have produced on record, the documents establishing his ownership over the property in dispute. More so, the passage which is shown to be in existence at the spot, if obstructed by the defendant, then it will lead to harassment/loss to the plaintiff. So, the plaintiff was able to establish his case through cogent and convincing evidence on his behalf. In the given set of circumstances, the learned lower Court, while relying upon the Musavi Ex.P1 has rightly opined to give verdict in favour of the plaintiff/respondent and as such, the same calls for no interference by this Court and the same is upheld and affirmed.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by the learned Courts below and rightly so, it being a matter of record. Had the passage in question been demolished by the defendant-appellant, the plaintiff-respondent would be left with no other passage to approach his fields for the purpose of cultivation. As per the documentary evidence available on record, the passage shown at points A, B and C in the Masavi Ex.P1, was the only passage available to the fields of the plaintiff. Appellant-defendant failed to rebut the documentary evidence produced by the plaintiff. It was not even pleaded or argued case on behalf of the defendant-appellant that the plaintiff was having any other alternative passage to his fields. Having said that, this Court feels no hesitation to conclude that 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.

Learned counsel for the appellant could not point out any question

of law, much less substantial question of law, nor any substantial question of law has been found involved in the present appeal, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. The learned Courts below have recorded their concurrent findings of facts. The impugned judgments have been found based on sound reasons, having been passed on the basis of evidence available on record and strictly, in accordance with law, therefore, the impugned judgments and decrees deserve to be upheld, for this reason as well.

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 since no illegality or perversity has been found in either of the impugned judgments passed by the learned Courts below, the same deserve to be upheld. The Regular Second Appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

03.02.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No