

RSA No. 6034 of 2016 (O&M)

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

RSA No. 6034 of 2016 (O&M)

Date of Decision: 19.7.2017

Shiv Dutt Gir

.....Appellant

Vs.

Kirpal Singh (since deceased) through his LRs and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Mohinder Kumar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of defendant, is directed against both the impugned judgments and decrees passed by the learned courts below, whereby suit for permanent injunction filed by the plaintiff-respondents, restraining defendant-appellant from encroaching upon the public passage, was decreed by the learned trial court vide its impugned judgment dated 30.11.2013 and first appeal of the defendant was also dismissed by the learned first appellate court on 12.8.2016.

Brief facts of the case, as recorded by the learned trial court in para 2 to 4 of the impugned judgment, are that plaintiff was owner of khasra No. 75, khewat No. 39, khatauni No. 40 as per jamabandi for the year 2000-2001 situated at village Lohgarh, Tehsil and District Ludhiana. It was averred that along with the property of the plaintiff, there was a passage

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comprising in khasra No. 74/1, khewat No. 593, khatauni No. 630 as per jamabandi for the year 2000-2001. On the other side of khasra No. 75 and along with the khasra No. 74/1, there was a property of defendant No.1 and the other co-owner of land comprised in khasra No. 70,71,72,73, 74 situated at Village Lohgarh, Tehsil and District Ludhiana. This passage was an existence since the time immemorial and was being used by the plaintiff and other residents of the village.

It was averred that defendant No.1, with the intention to mix the property of the passage in his own property, tried to make encroachments by way of raising a wall in front of this passage. The plaintiff along with his family members, i.e. wife, daughter-in-law, requested defendant No.1, not to stop the passage by way of raising construction but defendant No.1 refused to accept the request and gave beatings to the plaintiff and her daughter-in-law. Defendant No.1 was an old person, he suffered injuries from the hands of the plaintiff and his son and other members and plaintiff got registered a case vide FIR No. 60 in police station Dehlon, Distt. Ludhiana on 16.9.2003.

It was further averred that defendant No.1 had no right to interfere in the use of passage by the plaintiff and he had no right to make the construction and encroachment over the passage, but he was adamant to do the same. In case, defendant No.1 would succeed in his evil designs, plaintiff shall suffer an irreparable loss and injury, which shall not be compensated in terms of money rather it would result into multiplicity of litigation which was not intention of law rather it would be great difficult for the plaintiff to get restored the passage from defendant No.1.

Upon notice, defendant No.1 appeared and filed his contesting written statement, raising more than one preliminary objections. On

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completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether plaintiff has not come to the court with clean hands? OPD
3. Whether the plaintiff has no concern with the suit property? OPD
4. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. 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 case, by leading cogent and convincing evidence. Accordingly, his suit for permanent injunction, restraining defendant No.1-appellant from encroaching upon public passage, was decreed by the learned trial court, vide impugned judgment and decree dated 30.11.2013. Feeling aggrieved, defendant No.1 approached the learned first appellate court by way of his first appeal, which also came to be dismissed, vide impugned judgment and decree dated 12.8.2016. Hence this regular second appeal at the hands of defendant No.1.

Heard learned counsel for the appellant.

A bare perusal of both the impugned judgments will make it crystal clear that as per Aks-shazra (Ex.P-4), the suit land was located in khasra No. 74/1. A small strip, which has been shown in khasra No. 74/1 and 75 in Aks Shazra, has been specifically identified, as the suit property forms part of public passage. Area of this public passage in the form of small strip

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in khasra No. 74/1 and 75 was just three marla. Defendant No.1-appellant purchased the land vide two sale deeds Ex.D-1 and Ex.D-2 from khasra Nos. 71, 72, 496 and 497. This was the basic reason that there was no scope for mentioning khasra No. 74/1 and 75 in either of these sale deeds. Further, defendant No.1-appellant failed to produce in his evidence any relevant revenue record, to show that he was the exclusive owner in possession of the suit property.

In fact, as per the relevant revenue record, suit land in khasra No. 74/1 was recorded as the ownership of *jumla mushtarka malkan hasab rasad rakba khewat*. It had never been the pleaded or argued case on behalf of the appellant that he has got his share separated from *jumla mushtarka malkan hasab rasad rakba khewat* and the small strip of three marlas in khasra No. 74/1 fell to his share. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing the impugned judgments and the same deserve to be upheld.

Once the plaintiff duly proved his case by producing relevant and convincing evidence, including the relevant record, his suit was rightly decreed by the learned courts below. Appellant was trying to encroach upon the public passage for which he has got no right in law, thus, he was bound to fail. That is what has been held by both the learned courts below in their respective impugned judgments and decrees, which deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent

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findings recorded by the learned first appellate court in para 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“The suit property is bearing khasra no.74/1 and is situated in village Lohgarh. The respondents placed on record aksh shajra Ex.P4 showing the location of suit property bearing khasra no.74/1. Even the location of khasra no.74 and 75 has been shown in the said aksh shajra. So there is no dispute regarding the identity of the suit property. From the perusal of jamabandis Ex.P5 and Ex.D5 for 2000-01 it is evident that Kirpal Singh, predecessor in interest of the respondents was recorded as cosharer in khasra no.75. From the perusal of aksh shajra Ex.P4 it is evident that khasra no.74/1 is adjoining to khasra no.75. From the perusal of jamabandis Ex.P6 and Ex.D4 for year 2000-01 it is evident that khasra no.74/1(0-3) was recorded as a public passage. Sale deeds Ex.D1 and Ex.D2 are relating to sale of land comprised in khasra nos.71, 72, 496 and 497. There is no mention of khasra no. 74/1 in both the said sale deeds. Jamabandi Ex.D3 is relating to khasra nos.71, 72, 73 and 74. Jamabandi Ex.D6 is relating to khasra nos. 73 and 74. In the case in hand no document or revenue record has been placed on the file by the appellant to prove that he is the exclusive owner in possession of the suit property bearing khasra no.74/1. From the perusal of jamabandis Ex.P6 and Ex.D4 it is evident that the suit

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property bearing khasra no.74/1 was recorded to be owned by jumla mushtarka malkan hasab rasad raqba. It means the said land was carved out after applying a pro-rata cut on the holdings of the proprietors of the village and such land vests in the gram panchayat for the management and control. From the perusal of above said revenue record it is also evident that the suit property is being used as a common passage by the inhabitants of the village. There is nothing on the record to prove that the suit property is a private passage of the appellant. It has come into evidence that prior to filing of the suit the appellant threatened to encroach the said public passage. The appellant has got no right to raise any construction in the passage in dispute or to obstruct the respondents from using the said public passage. So the trial court rightly decided all the issues in favour of the respondent no.1 and against the appellant.”

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 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

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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.

19.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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