

RSA No. 2605 of 2014 (O&M)

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

RSA No. 2605 of 2014 (O&M)

Date of Decision: 18.4.2017

Gram Panchayat, Chandpura, through Sarpanch, Gram Panchayat
Chandpura, Tehsil Narnaul, District Mohindergarh, Haryana

.....Appellant

Vs.

Dalip Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.P. Sharma, Advocate
for the appellant.

Mr. M.S. Randhawa, Advocate
for respondent No.1.

Mr. Mukesh Yadav, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendant-Gram Panchayat has approached this Court by way of present regular second appeal, against the concurrent findings of facts recorded by the learned courts below, whereby first appeal of the Gram Panchayat was dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 22.1.2014, upholding the impugned judgment and decree dated 15.11.2010 of the learned trial court, decreeing the suit of plaintiff-respondent for permanent injunction, restraining defendant No.2 from raising any construction and obstructing the common passage and the defendants were also directed to remove encroachment from

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the public path.

Brief facts of the case, as noticed by the learned first appellate court in para 2 and 3 of its impugned judgment, are that decree for permanent injunction restraining the defendant from raising the construction in the passage in dispute measuring 7 kanal 7 marlas comprised in khewat No. 151 min, khatoni No. 244 min, khasra No. 103 as per jamabandi for the year 1997-98 situated at village Chandpura, Tehsil Narnaul which was shown in yellow colour in file No. 92 dated 23.8.1995 decided on 23.8.1995. Plaintiff also prayed that if defendants succeeded to raise any type of construction in the suit property, then they be directed to remove encroachment by issuing mandatory injunction against them.

Plaintiff further stated that defendant No.2 had already encroached upon some portion of the passage in dispute by constructing a boundary wall which was shown in red colour in site plan. Defendant No.2 was the personal member of Sarpanch of Gram Panchayat. The Gram Panchayat wanted to construct a boundary wall of the school comprised in killa No.18 and 23 of rectangle No.56 just to legalize the encroachment made by defendant No.2 in the passage.

Upon notice, defendant-Gram Panchayat put appearance and filed its contesting written statement, denying the allegations levelled by the plaintiff. It was also pointed out by the defendant-Gram Panchayat that defendant No.2 and his brother had already removed the encroachment at the spot. Defendant No.2 appeared in person before the learned trial court and made a statement he had not raised any construction and did not want to file any written statement. On completion of pleadings of the parties, the learned trial court framed the following issues:-

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- 1. Whether the plaintiff deserves for the relief of injunction as prayed for?OPP*
- 2. Whether the suit is not maintainable?OPD*
- 3. Whether the plaintiff has no cause of action to file the suit?OPD*
- 4. Whether the plaintiff has no locus standi to file the suit? OPD*
- 5. Whether the plaintiff is estopped from filing the suit by his act and conduct?OPD*
- 6. Whether the report of the Local Commissioner dated 23.7.2004 is liable to be st aside?OPD*
- 7. Relief.*

In order to prove their pleaded case, 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, learned trial court came to the conclusion that plaintiff has duly proved his case. Respondent No.2 was found to have encroached upon public path. Accordingly, suit of the plaintiff was decreed with costs vide impugned judgment and decree dated 15.11.2010 passed by the learned trial court. Defendant No.2 did not file any appeal. However, Gram Panchayat filed an appeal, which came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 22.1.2014. Hence this regular second appeal at the hands of unsuccessful defendant-Gram Panchayat.

Heard learned counsel for the parties.

At the very outset, when learned counsel for the appellant was confronted as to how Gram Panchayat was feeling aggrieved against the judgment and decree passed by the learned courts below, particularly when the plaintiff was doing the job of Gram Panchayat, in getting the encroachment removed from public path, he had no answer and rightly so, it

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being a matter of record. It is also not in dispute that from the pleadings of the parties, including the written statement filed by the Gram Panchayat, it had become crystal clear that defendant No.2 had encroached upon the public path. It was also stated by the Gram Panchyat in its written statement that defendant No.2 and his brother had already removed the encroachment at the spot.

However, this stand taken by the appellant-Gram Panchayat was found based on half truth and it was also controverted by the report of Local Commissioner as Ex.PW1/B and PW1/C, wherein it was disclosed that respondent No.2 had encroached upon public path in question. The abovesaid report also pointed out against the plaintiff to the effect that plaintiff had put some stones on the path in question. In the circumstances of the case, learned trial court rightly found that putting up some stones would not amount to encroachment. 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 decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned first appellate court examined, considered and appreciated true facts of the case as well as evidence available on record in the correct perspective. Relevant findings recorded by the learned first appellate court in para 16 and 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“Plaintiff has also examined PW-5 Om Parkash, Retired Naib Tehsildar. He has stated that he demarcated the suit property on 1.8.1995 on the application of Sarpanch of the Gram Panchayat, Chandpura. He has proved that report Ex.PW-5/A and

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site plan also show that defendant No.2 and some other persons have encroached upon the passage bearing khasra No. 103 belonging to Gram Panchayat. From the demarcation report Ex.PW-1/B and Ex.PW-5/A, it was proved that the defendants had encroached upon some portion of the passage. Therefore, the learned trial court has rightly directed the defendants to remove the encroachment from the passage. If the plaintiff has also made some encroachment in the passage, the Gram Panchayat may take action against him accordance with law for removing the said encroachment. The contention of the learned counsel for the appellant that jurisdiction of the civil court is barred is not tenable because in this case there is no dispute regarding ownership of the Gram Panchayat over the suit property and therefore, provisions of section 13 of Punjab Village Common Lands (Regulations) Act, 1961 are not application in this case.

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 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 **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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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.

However, before parting with the order, it is made clear that whosoever is found to have encroached upon public path in question, said encroachment shall be got removed by the Collector, Mohindergarh at Narnaul, without any further loss of time. Accordingly, Collector, Mohindergarh at Narnaul, is directed to get carried out a fresh demarcation in continuation with earlier demarcation Ex.PW5/A and site plan Ex. PW5/B noticed hereinabove. After getting the demarcation carried out with prior notice to all concerned, the Collector, Mohindergarh at Narnaul, shall ensure removal of encroachment from the public path at an early date and in any case within a period of six months from the date of receipt of certified copy of this order, taking appropriate action, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, instant regular second appeal stands disposed of, however, with no order as to costs.

Office is directed to send a certified copy of this order to the Collector Mohindergarh at Narnaul, for compliance.

18.4.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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