

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5333 of 2015 (O&M)

Date of decision: 10.10.2017

Somi

... Appellant

Vs.

Nirmala Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant No.3 is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for mandatory injunction and permanent injunction filed by the plaintiff was decreed by the learned trial Court vide its impugned judgment and decree dated 26.10.2012 and first appeal filed by defendant No.3 was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 06.05.2015, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned Additional District Judge in para 2 of the impugned judgment, are that the plaintiff was owner in possession of House No.111/14, Jattan Mohalla, Karnal, which is bounded as

under: -

North	:	House of Sumer etc.
South	:	House of Kesho Ram,
East	:	Plot of plaintiff & then main road,
West	:	Gali.

It had been further pleaded that towards the northern-eastern side of the house of plaintiff, she had a plot shown as BAEFG in the site plan Ex.PW6/A. The doors and window of the house of plaintiff open towards the eastern side and in front of door D-1, there existed a gali coming from southern side from the house of Kesho Ram etc. and then turning towards the eastern side and opening in the main street i.e. ABCD. It was a public street (gali saream) in use by the plaintiff and other persons of the locality for ingress and egress to their houses. The defendants intended to encroach upon the gali and their predecessors-in-interest i.e. Ranjit Singh etc. had attempted to encroach upon the gali and the plaintiff had to knock the door of the Court by filing Civil Suit No.743 of 1994 titled as Nirmala Devi Vs. Amar Singh and others for permanent injunction. The matter was compromised between the parties and Ranjit Singh (deceased father of defendants No.1 to 4, husband of defendant No.5 and brother of defendant No.6) had made a statement in the Court on 28.10.1994 for not encroaching upon the gali in dispute or raising any construction therein. The suit was dismissed as withdrawn on 07.11.1994 and being their predecessors-in-interest, defendants No.1 to 5 were bound by the statement of Ranjit Singh. But still the defendants intended to raise construction over the disputed portion of public street ABCD. The defendants raised illegal construction over portion BCXY and collected building material over portion

XYAD and blatantly refused to accede the request of plaintiff and other inhabitants of the area.

Defendants were put to notice. Defendant No.3 appeared and filed the contesting written statement, raising more than one preliminary objections. Defendants No.1, 2, 4 and 5 did not come forward and were proceeded against ex-parte. Defendant No.6 expired during pendency of the suit and his legal representatives were also proceeded against ex-parte by the learned trial Court vide order dated 09.11.2010. Plaintiff filed her replication to the written statement filed by defendant No.3. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is owner in possession of House No.111/14, Jattan Mohalla, Karnal as mentioned in para No.1 of the plaint?
OPP
2. Whether defendants No.1 to 5 have raised an illegal construction on portion BCXY as shown in the site plan? OPP
3. Whether the place marked ABCD by the plaintiff in the site plan is not a gali, but the private property of the defendants? OPD
4. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD
5. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts? OPD
6. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After going through the evidence brought on record and hearing

learned counsel for the parties, learned trial Court came to the conclusion that plaintiff has duly proved her case by leading cogent and convincing evidence. Accordingly, her suit for mandatory injunction and permanent injunction was decreed by the learned trial Court vide its impugned judgment and decree dated 26.10.2012. It was only defendant No.3 who felt aggrieved and filed his first appeal, but the same was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 06.05.2015. Hence this regular second appeal at the hands of unsuccessful defendant No.3.

Heard learned counsel for the appellant.

It is a matter of record that plaintiff-respondent purchased a piece of land vide sale deed dated 29.08.1968 Ex.PX and constructed her residential house thereon. Ownership of the plaintiff had gone undisputed on record. It was house No.111/14 situated in Jattan Mohalla, Karnal. It is also a matter of record that plaintiff filed Civil Suit No.743 of 1994 titled as Nirmala Devi Vs. Amar Singh, wherein the parties arrived at a compromise. Consequently, a statement dated 28.10.1994 was suffered on behalf of the defendants to the effect that they shall not cause any encroachment upon the street in question. Accordingly, abovesaid civil suit was dismissed as withdrawn. However, the defendants again started causing encroachment upon the street in question, forcing the plaintiff to approach the learned Civil Court once again.

After considering and appreciating the true facts of the case as well as evidence available on record in correct perspective, the learned trial Court rightly came to the conclusion that plaintiff has duly proved her case. Similarly, the learned first appellate Court again appreciated the evidence correctly and returned his own findings to the effect that plaintiff was entitled for the decree

of mandatory injunction as well as permanent injunction. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in para 10 of the impugned judgment, which deserve to be noticed here, read as under: -

“The respondent-plaintiff has placed on record a registered sale deed dated 29.8.1968 as Ex.PX. A perusal of the sale deed reveals that the respondent-plaintiff Nirmala Devi is owner in possession of house No.111/14, Jattan Mohalla, Karnal. Earlier also, she has filed one another civil suit bearing No.743 of 1994 titled as Nirmala Devi Vs. Amar Singh, wherein, she has sought the permanent injunction. The said civil suit was dismissed as withdrawn by respondent-plaintiff Nirmala Devi vide order dated 07.11.1994, Ex.D2, by way of making the statement Ex.D3 for withdrawal of suit. In the said civil suit, site plan Ex.P2 was prepared by Harminster Singh, Draftsman, who has appeared as PW3 in the said civil suit. The said site plan Ex.P2 is quite similar to the site plan Ex.PY produced by the respondent-plaintiff in the present suit. In the said civil suit bearing No.743 of 1994 titled as Nirmala Devi Vs. Amar Singh, the defendants (including Ranjit Singh, father of present defendants No.1 to 4 and husband of

defendant No.5) were restrained from encroaching the gali marked ABCD in the site plan Ex.P2/Ex.PW6/A. The said civil suit was compromised because predecessor-in-interest of defendants No.1 to 5 namely Ranjit Singh had made a statement dated 28.10.1994 that they shall not make any encroachment upon the street in question and as a consequence of it, the said civil suit was ordered to be dismissed as withdrawn on 07.4.1994. The defendant No.6 Amar Singh of the present suit was also impleaded as defendant in the said civil suit. Since defendants No.1 to 5 have stepped into the shoes of their predecessor-in-interest namely Ranjit Singh and therefore, they are bound by the statement made by Ranjit Singh in the previous suit. Consequently, it can be held that both parties are bound by the compromise effected in the said civil suit bearing No.743 of 1994. In this way, from the oral as well as documentary evidence placed on record, it stood established that the respondent-plaintiff is owner in possession of the house No.111/14, Jattan Mohalla, Karnal and there exists a public street marked ABCD as shown in the site plan, Ex.PW6/A.

The appellant-defendant has taken the plea that a compromise was entered into between the parties, but this plea has not been proved by the appellant-defendant by way of leading cogent and convincing evidence. Moreover, the subject matter of the compromise is public property i.e. public street and as such, it can be held that private parties have got no right to enter into compromise regarding the dispute pertaining to public street.

Moreover, the appellant-defendant has not been able to prove his title over the property. In view of the above discussion, it can be held that there exists a public street marked as ABCD in the site plan, Ex.PW6/A and therefore, the same cannot be allowed to be encroached upon by the appellant-defendant. Accordingly, the findings returned by the learned trial Court on this aspect are quite legal and are hereby affirmed.”

It seems that the defendants were trying to use their muscle power against the plaintiff, who was a humble woman. Once Sh. Ranjit Singh had made a statement before the Court during earlier round of litigation that no encroachment shall be caused on the street in question, defendant-appellant would be bound by that statement, because Ranjit Singh was none else, but father of present defendants No.1 to 4. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

Further, a comparison of site plans placed on record by both the parties would show that the plaintiff has successfully proved her case by leading cogent and convincing evidence, including the site plan Ex.P2/Ex.PW6/A. On the other hand, site plan Ex.D1 placed on record by the defendants was not found to be a correct document. Once both the impugned judgments and decrees passed by the learned Courts below have been found based on sound reasons, duly supported by documentary as well as oral evidence available on record, the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise any question of law, much less substantial question of law, 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present 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

10.10.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No