

RSA No. 5420 of 2015 (O&M)

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

**RSA No. 5420 of 2015 (O&M)
Date of Decision: 8.3.2017**

Harinder Singh

.....Appellant

Vs.

Piara Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr.Ramesh Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 29.4.2015 passed by the learned Additional District Judge, whereby first appeal of the plaintiff-appellant was dismissed, upholding impugned judgment and decree dated 4.4.2013 of the learned trial court, dismissing the suit for permanent injunction, restraining the defendants from affixing a door in wall AB and further restraining them from taking out any drain by breaking the wall AB in the private street ABCD, unsuccessful plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that plaintiff filed a suit for permanent injunction restraining the defendants from affixing a door in the wall AB and from carving out any drain by breaking the wall AB in the private street ABCD, which was situated in front of house of plaintiff and Darshan Kaur, which were bounded as East: Field of Darshan Kaur, West:

RSA No. 5420 of 2015 (O&M)

Main Bazar, North: Private Street, then house of defendant and South: Daya Singh son of Gehal Singh, situated in the area of Village Bulanda, Tehsil Nakodar, District Jalandhar, on the averments that father of the plaintiff namely Mukhtiar Singh was owner and in possession of house, which he had purchased on 19.7.1972, from Bishan Dass son of Boota Ram. His father had since expired and he had inherited the property of Mukhtiar Singh being legal heir. There was a street ABCD towards the North side of the house of plaintiff and street was 5 feet in width. Plaintiff and Darshan Kaur left the street ABCD from their ownership and it abuts from main Bazar and led to Shahkot-Parjian Road. The house of defendants was shown yellow in the site plan AXYZ was the passage which started from main bazar and was touching the house of defendant. The street in question was a private street and defendants had no concern with the street. Plaintiff constructed his house from long time and had been residing in his house with his family members from long time and had been using the street for his own purposes. Defendants started threatening to affix a door in wall AB and to open the same in the street ABCD and also threatening to carve out a drain from his/their houses in street ABCD for which they had no right, title or concern. Plaintiff had requested the defendants many a times to admit his claim but they put off the matter and a day before filing the suit, defendants had finally refused to admit the claim, which led him to file the suit.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

- 1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.*

RSA No. 5420 of 2015 (O&M)

- 2. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*
- 3. Whether the suit is not maintainable? OPD.*
- 4. Whether the plaintiff has not come to the Court with clean hands? OPD*
- 5. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
- 7. Whether the suit is bad for misjoinder and non joinder for the necessary party? OPD*
- 8. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 9. Relief.*

With a view to prove his pleaded case, plaintiff produced documentary as well as oral evidence. However, defendants did not produce any evidence, despite availing many opportunities. Eventually, evidence of the defendants was closed by court order. After hearing learned counsel for the parties and going through the evidence brought on record by plaintiff, learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, suit of the plaintiff was dismissed vide impugned judgment and decree dated 4.4.2013. Dissatisfied, plaintiff filed his first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 29.4.2015. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the plaintiff-appellant.

The entire case of the plaintiff-appellant was revolving around one basic fact recorded in document Ex.P-1-site plan. ABCD has been shown in purple colour in the site plan. Boundaries of the house of defendants have been shown in yellow colour whereas boundaries of the houses of plaintiff,

RSA No. 5420 of 2015 (O&M)

his brother and fields of one Darshan Kaur have been shown in black colour.

A bare perusal of the site plan would show that plaintiff, his brother as well as their neighbour-Smt. Darshan Kaur have put their individual and separate gates, pointing this street as ABCD, claiming it to be a private street. However, in the very nature of things, a perusal of the site plan would show that the street ABCD cannot be said to be a private street by any stretch of imagination. It is so said, because house of the plaintiff, house of his brother as well as house of defendants are touching ABDC. Having said that, this Court feels no hesitation to conclude that ABCD was a public street and both the parties to this unwarranted litigation would have equal right to use the same.

Appellant being plaintiff, onus was on him to prove his case but he failed to do so. In the given circumstances of the case in hand, both the parties to this litigation would be equally entitled to use this street ABCD as a public street, in the manner as if they were co-sharers. Plaintiff has no exclusive right on this street and he has been rightly denied the injunction against the defendants from opening a door in the wall AB and also from taking out a drain to take the dirty water of their house out. Since the learned courts below have rightly examined and appreciated true facts of the case, while recording their concurrent findings of facts, the impugned judgments and decrees deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. V. Srinivasaraju Vs. M/s Bharat Electronics Ltd. and others, 2009 (17) SCC 135 (SC)
2. Sohan Singh Vs. Jhaman, 1986 (1) PLR 326 (P&H)

RSA No. 5420 of 2015 (O&M)

3. Harjinder Singh Vs. Gram Panchayat, Villae Aakri, Tehsil Rajpura, District Patiala, 2012 (4) RCR (civil) 544 (P&H)

4. Baseshar Vs. Gram Panchayat, 2015 (3) RCR (civil) 270.(P&H)

5.Sardul Singh Vs. Jagjit Singh and others, 2015 (5) Law Heraled 4309 P&H)

Before arriving at a judicious conclusion, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant findings recorded by learned first appellate court in para 17 and 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“PW-4 Piara Singh tendered into evidence his affidavit Ex.PW4A, wherein he has mentioned that there is a street on the spot on the north side of house of plaintiff, which is five feet in width and this is private street of plaintiff and defendant have got no concern with the same. They have access to their house from other side. The plaintiff and his family are using this street for ingress and outgress for their house. Defendants are threatening to affix a door in a wall and open the same in the private street to carve out a drain from his house in the street ABCD and on the threats of defendants, plaintiff has filed the present suit. The defendants have no right, title with the suit property. It is only concerned with the plaintiff. However, during cross-examination, he has admitted that he has not seen any record regarding ownership of street in dispute. The street ends at the property of Gian Kaur, defendant No.6. He does not know whether the street was brick paved by Panchayat or not. He deposed that he know that one another suit was also pending regarding the disputed property and the same was dismissed due to father of Harminder Singh was expired.

Admittedly, defendants have not led any

evidence but it is well settled that plaintiff has to stand upon his own legs to prove his own case and he cannot take advantage of weakness of the defendant. Plaintiff has claimed the property (street) marked ABCD in the site plan to be his private street, as shown in site plan Ex.P1, but the same has not been proved by any draftsman. Even measurement of this said street has not been mentioned. Further, it has come in evidence on record that said street is 5 feet in width and 60 feet in length and ends at the property of Gian Kaur, defendant No.6. Perusal of copy of sale deed dated 26.7.72. Ex.P2 reveals that one Bishan Dass sold the property measuring 7 kanals 1 marla with specific boundaries to Daya Singh and Mukhtiar Singh and one street 5 feet wide has been shown mentioned on the southern side. It, thus, shows that the said street was already existing at the time of purchase of the said property. Plaintiff has failed to prove that street in question was left by him and Darshan Kaur from their own property and has, thus, wrongly claimed said street to be private street and he has not come to the Court with clean hands. Plaintiff has no cause of action and locus standi to file this suit and same is not maintainable. Defendants have every right to use the said street and plaintiff was rightly held not entitled to injunction, as prayed for. The findings of the learned trial court on issues No. 1, 2, 3, 5 and 8 are based on correct appreciation of evidence on record and same are thus, affirmed.

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 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

RSA No. 5420 of 2015 (O&M)

Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of 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 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.

(RAMESHWAR SINGH MALIK)
JUDGE

Ak Sharma
8.3.2017

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