

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.1115 of 2017
Date of decision:23.2.2017**

Satpal Dua

...Appellant

Versus

Municipal Council (now Municipal Corporation, Rohtak) and another
...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.D.K.Tuteja, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment of reversal dated 14.2.2017 passed by the learned first appellate court, whereby two identical first appeals separately filed by two defendants-respondents were allowed, setting aside the judgment and decree dated 22.12.2015 of the learned trial Court, in a suit for permanent injunction, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that the plaintiff along with his brother Shri Prem Chand purchased a plot measuring 188 sq. yards from Shri Banwari Lal and Shri Sham Sunder vide sale deed No.3225 dated 15.9.1981. Out of the said area, Prem Chand sold 94 share and the plaintiff sold 8 share to Kashmiri Lal vide sale deed No.2475 dated 8.7.1986. The plaintiff thereafter remained owner in possession of 86 sq. yards over which he had built up a double storey house and now he was owner in possession

of house No.750/13, Krishna Colony, Gohana Road, Rohtak. It has further been alleged that he was in exclusive possession of the said house since 15.9.1981 and towards the eastern side of this house, there was a constructed portion marked by letters 'CDEF' shown in red colour in the site plan. It measures approximately 10' x 12' where the plaintiff affixed a gate at point X in the wall E.D. which opened in the private gali/street which had been left for ingress and egress of the inhabitants of the houses of plaintiff, his neighbours Shri Kashmiri Lal and Shri Ashok Kumar, which leads to the main road. It has further been alleged that defendant No.2 moved an application to defendant No.1 by raising false allegation that plaintiff encroached upon 16'-17' of public street in his plot and installed gate also. The plaintiff was in peaceful, settled, exclusive, established and uninterrupted possession of constructed portion measuring 10' x 12' since purchase for the last more than 29 years without any interruption from any corner. Through this suit, it has been prayed that defendants be restrained from demolishing/removing the constructed portion 'CDEF' measuring 10' x 12'.

Having been put to notice, defendants appeared and filed their separate contesting written statements, raising more than one preliminary objections. Defendant No.2 also filed her counter claim, seeking declaration that disputed piece of land is a public street and not part of the house of the plaintiff. Replication was filed.

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

1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP

2. Whether the plaintiffs have not properly valued the suit for the purpose of court fee and jurisdiction and if so its effect?OPD.
3. Whether the disputed area marked by letters CDEF as shown in the site plan of the plaintiff is part of gali upto GH from point as shown in the site plan of the defendant No.2 and the portion CDEF is not part and parcel of house of plaintiff and plaintiff has no right, title or interest in the same?OPD.
4. If issue No.3 is proved in affirmative whether the defendant No.2 is entitled to decree of permanent injunction and mandatory injunction as prayed for?OPD.
5. Whether the counter claim of defendant No.2 is not maintainable in the present form? OPP.
6. Whether the suit is not maintainable in the present form?OPD.
7. Whether the plaintiff has no cause of action to file the present suit?OPD.
8. Whether the plaintiff has not come to the court with clean hands?OPD.
9. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence, before the learned trial Court. After hearing the learned counsel for the parties and going through the relevant record, the learned trial Court came to the conclusion that the plaintiff has proved his case. Accordingly, the suit for permanent injunction filed by the plaintiff was decreed, vide judgment and decree dated 22.12.2015.

Both the defendants filed their separate but identical appeals, which came to be allowed by the learned first appellate court, vide impugned judgment and decree dated 14.2.2017. Hence this second appeal,

at the hands of the plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff-appellant revolves around the fact whether piece of land shown as 'CDEF' in the site plan (Ex.P1) was part of public street or it was the part and parcel of the house of the plaintiff-appellant. To resolve this controversy, when specifically asked to show any document of title with the plaintiff-appellant, qua this piece of land shown as 'CDEF' in the site plan Ex.P1, learned counsel for the appellant fairly stated that appellant is not claiming ownership over this piece of land. Once it is so, plaintiff had no case, whatsoever, either on facts or in law. In that situation, defendant No.2 would have an equal right to use this piece of land which, in fact, is part of a public street between the residential houses of appellant and defendant No.2. This public street starts from the main road and goes up to point 'C' and 'F'.

A bare perusal of the site plan Ex.P1, produced by the plaintiff himself, will make it abundantly clear that the disputed piece of land marked by letters 'CDEF' was part of a public street. Owing to its location, as it was adjoining the house of the plaintiff, he started claiming it for his exclusive use for which he was not entitled either in law or in equity. Since this crucial aspect of the matter has been very correctly appreciated by the learned first appellate court in right perspective, while passing the impugned judgment and decree, the same deserve to be upheld.

The learned first appellate court, while reconsidering the entire case on facts as well as in law, recorded its cogent findings, before arriving at a just conclusion. The relevant findings recorded by the learned

Additional District Judge, in his impugned judgment, read as under:-

“From the sale deeds referred above, it is quite clear that there was a street of 30 ft. in length towards the western side of property purchased by the plaintiff and his brother. The plaintiff intentionally did not mention the actual measurement of the disputed property from the point-F till the end of the blue portion, so as to create confusion. However, the local commission in his site plan Exhibit D6 has mentioned the length of the plot of Kitabo Devi as 60' + 13' + 6' i.e. 79 ft. including the length of disputed area. The sale deed in favour of Satram Dass, vendor of defendant Kitabo Devi Exhibit P4 shows the dimensions of 78 ft. towards the western side of the plot purchased. Thus, the site plan Exhibit D6 tallies the dimensions mentioned in sale deed Exhibit P4 and sale deed Exhibit P3 regarding the plot of defendant Kitabo Devi. If the property in dispute i.e. portion CDEF had been left in exclusive use of the plaintiff, then the street in front of the house of Kashmiri Lal, would also have been mentioned to be property to be privately used by Kashmiri Lal in the sale deed Exhibit P10 executed by the plaintiff and his brother in favour of Kashmiri Lal. But no such fact has been mentioned in the said sale deed. Rather, the only fact that has been mentioned, is that there is a 17'-6” long street towards the eastern side of the plot sold to Kashmiri Lal. This 17'-6” and the 12' length shown in the site plan Exhibit P1 from point-E to F when counted comes to 29'-6” i.e. approximately 30'. Thus, documentary evidence available on the file produced by the plaintiff himself shows the property in dispute to be a street. Plaintiff has not produced any document that this portion was previously owned by his vendor. Thus, the plaintiff has failed to discharge the onus of proving the fact that the said street is a private street left for the use of only plaintiff Kashmiri Lal and Ashok Kumar.

Learned lower Court has failed to appreciate the fact that when a fact has been claimed by plaintiff himself that the property in dispute is for his private use, then only the plaintiff was required to prove such fact. But, the plaintiff failed to prove that the street in question is private property left for his exclusive user. Learned counsel for the plaintiff though had argued that it might be the property of third person, but defendant Municipal Council has no right over the same, but the plaintiff has failed to lead any evidence to this effect and cannot raise any finger on the Municipal Council. Any such street can certainly be termed as an public street when the plaintiff has failed to prove his claim and his right of exclusive user over the same. He has claimed himself to be in possession of the property in dispute. He can only be termed as a encroacher of a public property. Such an encroacher does not have any right to claim any discretionary relief of injunction from the court.

*Learned lower Court has further relied upon **The Municipal Committee Sirsa v. Arjan Dass, 1986 R.R.R.,237 (P&H)**. However, in **Hari Ram v. Jyoti Prasad and another case (supra)** it has been held that encroachment on a public street by any person is a continuing cause of action. So long any obstruction is created to free and unhindered access and movement in road, wrongful act continues thereby preventing the persons to use the public road freely and unhindered. That being a continuing source of wrong and injury, cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury. Thus, the action of the Municipal Committee qua the suit property can be held to be regarding a continuing cause.*

Thus, in the totality of the circumstances, it can be held that plaintiff has failed to prove that the property in dispute i.e. question marked with letters CDEF shown in red colour in the site plan Exhibit P1 and the portion shown with

yellow colour in site plan Exhibit D6 is a private street. Therefore, the suit of the plaintiff deserves to be dismissed. Defendant No.2 preferred a counter claim. It is clearly established that the above referred portion CDEF is not a part and parcel of the house of the plaintiff, therefore, construction of wall E.D. and the gate installed therein by the plaintiff requires to be demolished. Thus, the counter claim filed by the defendant No.2 requires to be allowed. Both the appeals accordingly stand allowed. Defendant Municipal Council is directed to demolish any construction raised by the plaintiff in above referred portion CDEF.”

After careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that learned first appellate court was well within its jurisdiction to pass the impugned judgment. Once the plaintiff-appellant is not claiming the ownership of this disputed piece of land shown as ‘CDEF’ in the site plan Ex.P1, there was no scope to escape from the inevitable conclusion that the disputed piece of land was part of a public street and defendant No.2 would have every right to use it as public street. Only that is what has been held by the learned first appellate Court. Under these circumstances, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

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

1. **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., 2005(2) SCC 217;**

2. **The City Municipal Council Bhalki, by its Chief Officer Vs. Gurappa (D) by Lrs and another, 2016 (2) SCC 200;**
3. **Municipal Committee Vs. Tirath Ram, 1982 CurLJ (CCR) 641 (P&H);**
4. **The Municipal Committee Sirsa Vs. Arjan Dass, 1986 PLJ 550 (P&H);**
5. **Lakhbir Singh Vs. Mewa Singh, 2002 (1) RCR (Civil) 662 (P&H).**

During the course of hearing, learned counsel for the appellant could not point out any jurisdictional error or patent illegality in the impugned judgment and decree passed by the learned Additional District Judge. He also could not point out any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.***

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 instant regular appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the

learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

23.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No