

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

RSA No. 2956 of 2017 (O&M)

DATE OF DECISION : 05.12.2017

Ganga Bishan

.... APPELLANT

Versus

Ajit Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Mani Ram Verma, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

This regular second appeal is at the behest of the plaintiff being aggrieved of the concurrent judgments and decrees passed by the learned courts below, dismissing his suit.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for permanent injunction restraining the defendants from interfering in a private *gali* adjacent to his house, as detailed in the head note of the plaint, further restraining the defendants from opening any gate or window in front of the private *gali* owned by the plaintiff.

The facts, as narrated in the plaint, are that the plaintiff was a resident of village Rampura (Baliyali), Tehsil Bawani Khera, District Bhiwani. He was owner in possession of a residential house marked with

letters DEFGH in the site plan attached with the suit. It was averred that the plaintiff was having a private *gali* marked with letters ABCD in the site plan attached to the plaint. *Gali* is said to be part of the house of the plaintiff and hence is a private *gali*. On threat from the defendants to interfere in the *gali* and on their opening three gates in the *gali*, the plaintiff filed a suit.

On notice, defendant No.1 filed written statement raising preliminary objections. On merits, it was averred that the site plan submitted by the plaintiff is wrong. It was denied that the *gali* was a private property. It was stated that the plaintiff purchased the plot from Roshan Thakur and at that time, the *gali* was being used by the defendants also. (It is made clear that the plaintiff purchased the plot from Malkhan Rajput, though his name is mentioned at some places as Roshan Thakur and as Malkhan Singh while appearing as PW.5) It was alleged by defendant No.1 that the plaintiff had constructed a bathroom in the *gali* and encroached upon the joint *gali*. When he was asked to remove the encroachment, the present suit was filed.

The learned trial court framed the following issues :-

- (1) Whether the plaintiff is entitled for relief of permanent injunction as prayed for ? OPP
- (2) Whether the plaintiff has no locus standi/cause of action to file the present suit ? OPD
- (3) Whether the suit of the plaintiff is not maintainable in the present form ? OPD
- (4) Whether the plaintiff has not come to the Court with clean hands ? OPD
- (5) Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
- (6) Relief.

To prove his case, the plaintiff himself appeared in the witness box as PW.1 and examined Leela Ram; Amir Chand Taneja, Architect; Bishamber; and Malkhan Singh deposed as PW.2 to PW.5 respectively. Site plan was produced as Ex.P1.

In order to rebut the claim of the plaintiff, defendant No.1 appeared in the witness box, but before cross-examination could be conducted, he died. Thereafter, his wife Shanti Devi was examined as DW.1.

The learned trial court, after appreciating the facts and considering the evidence, decided issue No.1 against the plaintiff and in favour of the defendants. Issues No.2 to 5 were decided in favour of the defendants and against the plaintiff. The net result was that vide judgment and decree dated 11.11.2014, the suit was dismissed.

Being aggrieved, first appeal was filed by the plaintiff. Learned Additional District Judge, Bhiwani, vide judgment and decree dated 18.01.2017 dismissed the appeal.

The core issue involved in the present litigation is as to whether the *gali* shown in the site plan with letters ABCD is a private property of the plaintiff or not.

In case, the plaintiff was able to prove it to be a private owned *gali*, only then the suit could have been decreed. There is no dispute with regard to the physical and exclusive possession of the residential houses of the plaintiff and the defendants. It is also not disputed that there is a *gali* shown in the site plan marked by letters ABCD, which leads from pucca street towards the house of the plaintiff. The said *gali* is adjacent to the house of the defendants.

The plaintiff had purchased a plot from Malkhan Rajput and constructed his residential house on it. It was claimed that the disputed *gali* is exclusively owned by him and is part of his residential house. In order to prove that the *gali* is a private property, the plaintiff appeared as PW.1 and reiterated his claim as made in the suit. But in his cross-examination, he was not able to disclose the total area of the plot and the area which was left out by him out of the said plot to be used as *gali* from pucca street. It was not stated by him that at the time of purchase of the plot, Malkhan Rajput had given actual, physical and exclusive possession of the disputed *gali*. PW.2 Leela Ram, PW.3 Amir Chand Taneja, PW.4 Bishamber and PW.5 Malkhan Singh appeared as witnesses to support the claim of the plaintiff. But in the cross-examination, PW.2 Leela Ram admitted that the disputed *gali* has been made pucca by Gram Panchayat in the year 2009. PW.3 Amir Chand Taneja, the draftsman, in his cross-examination mentioned that in the site plan, he has written as 'private *gali*' at the instance of the plaintiff. Similarly, PW.4 Bishamber in his cross-examination admitted that the *gali* was being used both by the plaintiff as well as the defendants for the last about 35 years. PW.5 Malkhan Singh failed to depose that the said *gali* was given to him in a family settlement along with the land of the plot, which was sold by him to the plaintiff.

All the above said discussion shows that the plaintiff failed to prove that the disputed *gali* was private property.

It is worth while to mention that the plaintiff admitted that there is no registered sale deed regarding purchase of the land from Malkhan

Rajput and no written document was prepared in this regard. Even Malkhan Singh in his cross-examination deposed that the land sold by him was owned by him as he occupied it when the Muslims left the locality. He admitted that there is no written agreement pertaining to the ownership of the land. In such circumstances, even the plaintiff has failed to show that he legally owned the residential plot, what to say of the disputed *gali*.

The other aspect raised in the suit was that the defendants had newly constructed three gates in the *gali*. The said allegation was belied by PW.3 Amir Chand Taneja, Architect, who deposed that the gates towards the *gali* were not newly constructed. Apart from this, it was noted by the learned courts below that the marked documents were placed on record by the plaintiff, from which it was evident that there was dispute with regard to opening of these three gates earlier and the matter was reported to the police. There was a compromise entered, which was placed as marked document, in which the parties agreed that three gates would remain in existence but no further gate would be constructed and the portion of the *gali* ahead of already existing three gates of the defendants would henceforth be of the plaintiff alone. This also establishes that the version put forth by the plaintiff was wrong and these three gates were not newly constructed but were in existence earlier also.

In the present appeal, though five questions of law have been framed, but at the time of arguments, learned counsel, instead of addressing arguments as per these questions of law, has argued that the fact that *gali* is a private property can be proved by oral evidence. He further submits that

the site plan produced on record proved that the *gali* was a private property. He relied upon the compromise effected in the police station that portion of the *gali* ahead of already existing three gates of the defendants would be owned by the plaintiff. Lastly, he contends that the learned courts below have mis-interpreted and mis-read the evidence.

The contentions raised above have no merit and are liable to be rejected. There can be no quarrel on the proposition that whether the *gali* is private property or not can be proved by oral evidence and the site plan. But in the present case, none of the witnesses produced by the plaintiff was worth reliance. Rather in their cross-examination, they deposed against the claim of the plaintiff, either by stating that the disputed *gali* was being used commonly by the plaintiff and the defendants, or by stating that the disputed *gali* was made pucca by the Gram Panchayat. The plaintiff could have impleaded the Gram Panchayat as a party in order to establish that the *gali* was not common *gali* but was his private property. But no such effort was made by the plaintiff. The site plan attached with the plaint will not prove that the *gali* is a private property, as PW.3 Amir Chand Taneja, Architect, in his cross-examination admitted that he referred the *gali* as private property at the instance of the plaintiff. The plaintiff cannot rely upon the compromise arrived at between the parties in the Police Station to prove that the *gali* is a private property, for the simple reason that the said compromise was a marked document produced in the suit and was not duly proved.

The last contention raised by learned counsel for the plaintiff that the learned courts below have mis-interpreted and mis-read the

evidence has not been substantiated. It has not been specifically pointed out that which evidence has been mis-interpreted or mis-read.

In view of the discussion above, no blemish can be casted upon the judgments and decrees passed by the learned courts below.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 05, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes