

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

**RSA No.3645 of 2017 (O&M)
Date of decision: 07.09.2017**

State of Haryana and others

.....Appellants

Versus

Karan Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.K. Mittal, DAG, Haryana,
for the appellant.

Ritu Bahri, J.

CM No.8824-C of 2017

For the reasons mentioned in the application, same is allowed and
delay of 209 days in filing of the appeal is condoned.

RSA No.3645 of 2017

This appeal has been filed against the judgment dated 07.09.2016
passed by the District Judge, Sonapat, dismissing an appeal filed by
defendant-appellants against the judgment and decree dated 23.07.2015
passed by the Civil Judge (Senior Division), Gohana, whereby suit filed by
plaintiff-respondents for permanent injunction restraining the defendants
from constructing the road and *Nala* from the agricultural land of the
plaintiff, has been decreed.

Karan Singh etc.-plaintiffs (respondents herein) filed a suit for
permanent injunction restraining the defendants (appellants) from
constructing the road and *Nala* from their agricultural land comprised in

No.796/752 min, Khatoni No.886, Killa No.55/18/3, measuring 1 Kanal 16 Marlas, situated in the revenue estate of village Jasi Tehsil, Gohana, District Sonapat. It was stated that plaintiffs were owners in possession of the suit land, but the defendants wanted to construct the road and *nala* through the said land illegally and forcibly, to which, defendants have no right. Hence, the suit.

Upon notice, defendants-appellants filed written statement by taking preliminary objections with regard to maintainability of suit, cause of action, estoppel, suppression of true facts, locus standi, Court fee, limitation and non service of mandatory notice under Section 80 CPC. opposing the case of the plaintiff. On merits, it was stated that the road in question i.e. Meerut-Sonapat-Gohana (State Highway No.11) belongs to the defendants from Km. 116.680 to 131.700. It was made pucca in the year 1972-73 upto the extent of 12 Ft. and remaining land on both sides of the road was left open, which was being used for the same purpose. In the year 2005, the road was widened up to 18 Ft. from 12 Ft. The defendants were going to widen the said road up to 23 Ft. It was further stated that even after constructing the road upto 23 Ft., more land of defendants remained vacant. The *Nala* in question was already there and the defendants wanted to construct the same at its previous place. The road in question was meant for the welfare/convenience of public. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement was filed controverting the allegations made in the written statement and reiterating those of the plaint.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to a decree for permanent injunction, as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs haven no cause of action and locus standi to file the present suit? OPD
4. Whether the plaintiffs are estopped to file the present suit by their own acts and conduct? OPD
5. Whether the plaintiffs have not come with clean hands and have suppressed the true and material facts from the Court? OPD
6. Whether the suit is hopelessly time barred? OPD
7. Relief.

Trial Court, after going through the evidence led by the parties, dismissed decreed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts have returned finding on issue No.1 in favour of plaintiffs (respondents) and they were held to be owners of the land in dispute measuring 1 Kanal 16 Marlas. It was observed that without acquiring the land in accordance with law, the defendants intended to extend the width of the road from 18 feet to 23 feet. However, they could not produce any evidence with regard to ownership of the said land. Sumit Kumar, Sub Divisional Engineer, PWD (B&R) appeared as DW-1 and placed on record copy of history sheet qua the said road, but the same was not sufficient to prove the ownership of defendants (State). He had admitted that there was no other document qua ownership of the disputed land with the defendant-department. Further, Ravin Dutta, J.E., PWD (B&R) (DW-2) in his cross-examination, had deposed that he did not know

as to what were the Killa numbers or Khasra numbers of the land, from which the road was to be constructed. The defendants (appellants) have failed to prove existence of any drain on the spot. They did not produce any demarcation report to show that in the process of expansion of road and construction of alleged *nala*, they were not encroaching the land of the plaintiffs.

After going through the impugned judgments, it is apparent that plaintiffs (respondents) are owners of the suit property. Without initiating any acquisition proceedings in accordance with law, the defendants are trying to encroach upon their land by widening the metalled road upto 23 feet from the existing width of 18 feet. In the absence of any evidence of ownership in favour of the appellants (defendant), the suit of the plaintiffs has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

07.09.2017
ajp

(RITU BAHRI)
JUDGE

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