

RSA No.4643 of 2017 (O&M)

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

**RSA No. 4643 of 2017 (O&M)
Date of Decision: 4.10.2017**

Jagdish Lal Popli and others

.....Appellants

Vs.

Mithlesh Gupta and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Akshay Kumar Goel, Advocate
for the appellants.

Mr. Alok Jagga, Advocate
for the caveators-respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for mandatory and permanent injunction, filed by the plaintiffs-respondents, was decreed by the learned trial court vide its impugned judgment and decree dated 30.11.2015 and first appeal filed by the defendants-appellants was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 5.7.2017, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 and 3 of its impugned judgment, are that suit was filed by the plaintiffs before the lower appellate court against the defendants for

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mandatory injunction and permanent injunction to the effect that the plaintiffs were permanent resident of Mahabir Mandir Wali Gali, near Jain Hiteshi Mandal, Bahadurgarh District Jhajjar and they were having the ration card, voter card etc. in the aforesaid locality and they had the right and interest in the properties which were vested in the Municipal Council Bahardurgarh. It was further submitted that plaintiff No.1 Mithlesh was owner in possession of a residential house situated at Mahabir Mandir Wali Gali, Bahadurgarh which was marked by letters GHIJKL shown in yellow colour in the site plan. The boundaries and dimensions of the said house are as under:-

North: House of Harnam and Vijay (37'0"+10'0")

South: House of Charan Dass (47'0")

East: Vyas gali 14' wide (33'6")

West: Gali Mahabir Mandir Wali 4' wide (20'6")

It was further submitted that there existed public streets towards that western and eastern side of the house of plaintiffs, which was used by the plaintiffs and other inhabitants of the locality for ingress and egress in their respective houses. The said street vest in the Municipal Council, Bahardurgarh, so it has constructed the same initially by putting the bricks and presently by RCC. The MC, Bahadurgarh also constructed the water drains (nala) in it. The Public Health Department of Haryana laid down the sewerage line etc., and the Telephone Department kept the phone line boxes in the street. Two windows marked with letter 'W' exist on first floor of western side wall of the house of plaintiffs was existing in the public street. Many windows and drains were also existing on outer wall of Harnam Dass. It was further submitted that in the Western side of the street, known as 'Gali

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Mahabir Mandir Wali', there was a house of defendant which was marked by letters MNOC, shown in green colour in the site plan. Defendant No.2- Mahender Pal Popli purchased the plot, over which the defendants had constructed their house vide registered sale deed No. 5957 dated 22.3.2004. Defendants constructed their house over the said plot in the mid of 2007.

It was further averred that the street marked by letters ACOP which existed in the middle of house of plaintiffs and house of defendants which was shown with pink colour was the public street and the defendants or any other person got no right to encroach upon the public street or created any nuisance, even though the defendants in the last of December, 2013, had encroached upon the public street, marked with letters ACOP shown in pink colour by installing two gates between point "F" and "D" and also between point "A" and "C" and by raising a covered projection of 3' width having double storey construction over it marked with letters BCDE forcibly and illegally. It was further averred that the level of the house of plaintiffs fell down from the Eastern side because the Municipal Council Bahardurgah lifted the level of the street known as Vyas Gali and due to this very reason, it created hindrance for smooth ingress and egress in their houses, therefore, they wanted to get affixed a gate in Western side wall of their house between the portion marked by letters 'A' and 'L' for ingress and egress in their house from the Western side but defendants started to assert their right and title over the street in question and threatened the plaintiffs to face the dire consequences, if they affixed their gate in their wall of Western side and started to ingress and egress from the street in question, i.e. the street shown in pink colour between the houses of the parties to the suit. This act of the defendants was highly illegal and contrary.

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It was further submitted that the plaintiffs were the law abiding citizens and having faith in law whereas the defendants were strong headed persons who did not believe in law. The plaintiffs requested the defendants several times to remove their illegal encroachment and not to restrain the plaintiffs from affixing the gate in their Western side wall towards the street in question and also not to interfere in the ingress and egress in their houses from the street in question. It was further submitted that defendants avoided the matter on one or the other pretext but finally on 15.6.2014, they flatly refused to accede to the request of the plaintiffs.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. They denied the disputed street to be a public street, as claimed by the plaintiffs. Replication was filed by the plaintiffs. On completion of pleadings of the parties, learned trial Court framed the following issues: -

- 1) Whether the plaintiffs are entitled to a decree for mandatory injunction as prayed for on the grounds mentioned in the plaint?
OPP
- 2) Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for on the grounds mentioned in the plaint?
OPP
- 3) Whether the suit of the plaintiffs is not maintainable in the present form?OPD
- 4) Whether the plaintiffs have no locus standi to file the present suit?OPD
- 5) Whether the plaintiffs have not come to the court with clean hands and have suppressed the material facts from the court?
OPD
- 6) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct?OPD
- 7) Whether the suit is bad for misjoinder and non-joinder of

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necessary parties?OPD

8. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their case, by bringing on record cogent and convincing evidence. Accordingly, suit for mandatory injunction and permanent injunction filed by the plaintiffs was decreed by the learned trial Court vide its judgment and decree dated 30.11.2015. Defendants felt aggrieved and filed their first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 5.7.2017. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the parties.

It was the pleaded and duly proved case of the plaintiffs that as per site plan (Ex.P2), the street in question was a public street. Construction thereon was raised by the Municipal Corporation. Rainy water of the roof of the house of plaintiffs also used to go in this very street. On both sides of this street, drains had been constructed for rainy and dirty water. Windows and ventilators were already fixed towards this street in question in the walls of the house of the plaintiffs when they purchased it. Ownership of the plaintiffs had never been disputed by the defendants-appellants.

On the other hand, defendants-appellants were claiming that the open space in front of their house was their private street and it was not public street, however, they failed to prove their pleaded case. It has been

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admitted even by the defendants that this street was made of RCC by the Municipal Corporation about seven to eight years back. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

A bare perusal of the statements of DW1-Jagdish defendant-appellant No.1 son of Sh. Dulli Chand and DW2-Ashok Kumar will make it crystal clear that both these witnesses have admitted in their cross examination that this street was made of RCC by the Municipal Corporation. DW2 categorically admitted that it was a public street and he was watching the same as such for the last about 50 years. Earlier it was made of bricks but thereafter Municipal Corporation made it of RCC. He had also admitted that drains for dirty water had been constructed on both sides of this street. Sewer line had also been laid down underneath this street about 20-30 years ago.

Another very material admission made by these witnesses was regarding correctness of site plan (Ex. P2). DW2 admitted that site plan (Ex.P2) was correct as per site. Both these witnesses also admitted that when the plaintiffs purchased their house, windows were already fixed in its walls adjoining this street. DW2 also admitted that street in question comes within the Municipal Limits, which was constructed by the Municipal Corporation about seven years ago. Thus, in view of the categorical statements made by both these material witnesses produced by the defendants-appellants themselves, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this

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reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 11 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

*“-After hearing the submission of both the counsels, the first plea comes before this court as to whether the rasta is a public rasta or private rasta. It is clear that there is no such document available on the file that this rasta is a private rasta. There is no document of ownership over the rasta by the appellants shown before the lower court. After going through the statement of PW4 it is clear that the street is in the ownership of Municipal corporation. It is clear from the documents Ex.P7 and Ex.P8 that this rasta/gali was got constructed by Municipal corporation. Learned counsel for the appellants submitted that rasta was got constructed upto Shyam Popli's house but this does not mean that the remaining rasta is not used by the public whereas a rasta is used by the public for ingress and outgress purposes itself forming the part of ownership over the Municipal Corporation. In this regard, I stand fortify with the law laid down titled Municipal Committee, Karnal vs. Nirmala Devi and; Hari Ram vs. Jyoti Prasad and another. I perused both these authorities. Hence, in view of law laid down by Hon'ble Supreme Court of India in **Municipal Committee, Karnal vs. Nirmala Devi** 1996 (3) RCR (civil) 367 (SC), it has been very much held that private property if forming the part of public street itself deemed to be vested in Municipal Committee by operation of Section 2(21) of Haryana Municipal Act. It is very much clear from the aforesaid authority that if private street is used as a public*

street itself be deemed to be vested in Municipal Corporation, hence, it is clear that rasta is not a private rasta. There is no document. In view of what has been discussed above, this plea has been decided against the appellants in favour of the respondents and rasta is a public rasta.

Now next plea comes before this court as to whether the rasta is in the ownership of Municipal Corporation and site plan Ex.P2 is correct. It is clear from both these witnesses DW1 and DW2 who have very much admitted that site plan Ex.P2 is as per the spot and as per the law. These witnesses also admitted the construction of rasta by Municipal Corporation and same is used for ingress and outgress of the public people. Hence, in view of the statements of both these witnesses, this plea is also decided against the appellants in favour of the respondents.

Learned counsel for the appellants while arguing submitted that he has also moved an application under Order 41 Rule 27 CPC with the prayer to allow him to produce the copies of plaint, written statement, judgment, decree and site plan. He has submitted that the documents were not in the knowledge of applicants such as copy of plaint titled as Bhagwant Saroop vs. Chander Lal, copy of written statement, copy of judgment, copy of decree and copy of site plan. The respondent has purchased the plot from Bahgwat Saroop son of Sh. Devui Dutt who has acquired the title of the plot through civil court decree dated 25.1.1997. It has been submitted that production of these documents is very much necessary for the proper adjudication of the matter.

On the other hand, learned counsel for the respondents has not filed the reply to this application, however, argued the matter straightaway submitted that this application has been filed just to delay the matter. Site plan is already attached with the plaint Ex.P2 has already been admitted by the witnesses DW1 and DW2. It has been submitted that this

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application is not maintainable. A prayer has been made for dismissing the application.

After hearing the submission of both the counsels, it is clear in this case that DW1 and DW2 have admitted that rasta/street in question has been got constructed by the Municipal Corporation. It is also clear that site plan has been duly admitted by both these witnesses. It is also clear that these documents have been shown by the appellants just to fill up the lacuna. It is settled law that no documents can be allowed to be produced at the final stage only in order to fill up the lacuna. Hence, the application under Order 41 Rule 27 of CPC is hand is devoid of merit and same is hereby dismissed. ”

Once the site plan (Ex.P2) stood duly proved at the hands of plaintiffs and it was also admitted to be correct by the witnesses produced by the defendants-appellants themselves, plaintiffs were able to prove their case strictly in accordance with their pleadings and also as per fact situation obtaining on record as well as at the site. There was sufficient documentary as well as oral evidence available on record, which corroborated the pleaded case of the plaintiffs-respondents and some of these documents were Ex.P7 and ExP8, besides site plan (Ex.P2). After careful perusal of the voluminous documentary as well as oral evidence, learned courts below recorded their cogent and concurrent findings of facts, rightly placing reliance on the statements of DW1 and DW2. In this view of the matter, no fault can be found with the impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not

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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 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 **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.

4.10.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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