

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

RSA No. 5179 of 2017 (O&M)

DATE OF DECISION : 21.11.2017

Raj Rani

.... APPELLANT

Versus

Municipal Council, Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh
Sahib

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ferry Sofat, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

This regular second appeal is at the behest of the plaintiff being aggrieved of dismissal of her suit for permanent injunction.

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 for restraining the defendant, its agents and servants from demolishing any part of the property owned by the plaintiff, detailed in site plan Annexure A annexed with the plaint. The suit property is situated within the revenue limits of village Kukar Majra, Tehsil Amloh, District Fatehgarh Sahib.

The facts as averred in the plaint are that the plaintiff was owner in possession of the property purchased by her vide registered sale

deed dated 17.01.2007 registered on 19.01.2007. The said property was purchased from the previous owner in the same condition as was shown in the site plan annexed with the suit. It was averred that the defendant was bent upon to demolish some part of the suit property by serving notice under Sections 172 and 220 of the Punjab Municipal Act. Hence, the suit was filed.

On notice, the defendant filed written statement. Among other pleas, it was averred that the plaintiff had encroached upon the *berms* of pacca road and she had encroached upon the public property.

The learned trial court framed the following issues :

- (1) Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
- (2) Whether the suit is not maintainable in the present form ? OPD
- (3) Whether no cause of action has been accrued to file the present suit ? OPD
- (4) Relief.

In order to support her case, the plaintiff produced Jaspal Singh, deed writer, as PW.1; Ashok Kumar Goyal as PW.2, who was marginal witness to the sale deed. Ranjit Singh, Kanungo, was examined as PW.3, who prepared the demarcation report. The plaintiff herself stepped into the witness box as PW.4. One Raj Kumar was examined as PW.5. Affidavits of PW.1 Jaspal Singh deed writer and PW.2 Ashok Kumar Goyal were exhibited as PW.1/A and PW.2/A, respectively. Sale deed was

exhibited as P1. Copy of jamabandi, site plan and report of the local commissioner appointed by the court were exhibited as P4, P5 and P6, respectively.

The defendant, in order to rebut the claim of the plaintiff, produced Amrik Singh, Inspector, M.C. Mandi Gobindgarh as DW.1, who tendered his affidavit as Ex.DW1/A. He produced his authority letter as Ex.D1. Report of Baljinder Singh Inspector was exhibited as D2. Copies of notices were produced as Ex.D3 and Ex.D4.

The learned trial court, after appreciating the facts and taking into consideration the evidence produced, decided issue No.1 against the plaintiff. Issues No.2 and 3 were decided in favour of the defendant and against the plaintiff. The net result is that the suit was dismissed vide judgment and decree dated 07.02.2013.

Being aggrieved of the judgment and decree passed by the learned trial court, appeal was filed by the plaintiff. Learned Additional District Judge, Fatehgarh Sahib, vide judgment and decree dated 24.07.2017 dismissed the appeal.

Hence, the present regular second appeal.

In the appeal, the following four questions of law were framed:-

- (1) Whether the judgments and decrees passed by the learned District Judge, Fatehgarh Sahib and Ld. Addl. Civil Judge (Senior Division), Amloh are sustainable in the eyes of law?
- (2) Whether the plaintiff/appellant is entitled for grant of permanent injunction?

- (3) Whether the plaintiff/appellant has prima facie proved her title to the property?
- (4) Whether the Ld. Courts below have appreciated the whole evidence led by the plaintiff/appellant?

Learned counsel for the plaintiff at the time of arguments, instead of addressing arguments on the aforesaid questions of law, contended that the learned courts below erred in dismissing the suit inspite of the fact that the sale deed was duly proved by the plaintiff. He submitted that the notices by the defendant were served on the husband of the plaintiff and not on the plaintiff. The grievance of learned counsel for the plaintiff is that report of the local commissioner was not considered. Lastly, he contended that the electric poles which are on the suit property are not of Municipal Council, but are of the Punjab State Electricity Board, therefore, the suit should not have been dismissed.

The learned courts below recorded the finding that there is a difference between the site plan attached with the sale deed and the site plan produced by the plaintiff in the suit. The site plan submitted in the suit showed construction beyond the actual area.

In the present case, foundation of the entire claim of the plaintiff is that she had purchased the suit property vide registered sale deed Ex.P1. Along with the sale deed, there was a site plan, which shows that the suit property as it is was purchased. This foundation itself is hollow. The issue in dispute is as to whether the property purchased by the plaintiff

included the public property, i.e the *berms* of metalled road or not. If there is an encroachment on the public property, the defendant has all the right to remove the encroachment.

In other words, the onus was on the plaintiff to prove that permanent injunction sought by her was with regard to the private property purchased by her.

The plaintiff badly failed to establish that the property in dispute, for which notices have been issued, is a private property. Rather, the witnesses who appeared for the plaintiff either in their statements or in their cross-examination stated that there was an encroachment.

There is no dispute in the present case that the property was purchased by the plaintiff from Hakam Singh, Harminder Kaur and Harpreet Singh. Ashok Kumar Goyal PW.2, who was the marginal witness to the sale deed, deposed in favour of purchase of the property but in his cross-examination, he admitted that two electric poles with heavy wires were there in the property. He admitted that the constructions shown are on the *berms* of metallic road. The plaintiff herself admitted that as per the sale deed also, two electric poles are erected beyond the wall. Her stand was that the said poles were there prior to execution of the sale deed. In other words, her stand is that she had purchased the land, as depicted in the sale deed, even if it is a public property. The said stand cannot succeed, because no private individual can sell the public property. The law is well settled that a vendor cannot pass a better title than what he himself possess. Reliance is placed upon a decision of the Hon'ble Apex Court in **Shanti Budhiya Vesta**

Patel and others Vs. Nirmala Jayprakash Tiwari and others, 2010 (5) SCC

104, wherein it has been held as under :-

“28. x x x A general proposition of law is that no person can confer on another a better title than he himself has.”

Similarly, in **Union of India and others Vs. Robert Zomawia Street**, 2014 (6) SCC 707, while holding that the successor will not have better title than what his predecessor had, the Hon'ble Apex Court observed as under :-

“13. x x x It needs to emphasis that the successor will not have better title than what his predecessor had.”

The claim of the plaintiff was duly rebutted by the defendant by the statement of DW.2 Avtar Singh, Junior Technician, who brought the record pertaining to street lights, installed by the Municipal Council, and deposed that two street lights were installed in the suit land.

The plaintiff relied upon the demarcation made by Ranjit Singh, Kanungo, who appeared as PW.3. His statement does not enhance the case of the plaintiff, as during his cross-examination, he admitted that for making demarcation, field book is required and he had no field book at the time of conducting demarcation. The report of the local commissioner, which was in favour of the plaintiff, is not worth reliance, as the local commissioner admitted that he had not consulted any site plan approved by DC regarding the roads in the said area and had not reported any encroachment made by

the plaintiff. He only submitted the report regarding the measured area as per the sale deed. The local commissioner never consulted any record for the area in question being part and parcel of *berms* on metallic road. The learned courts below came to the conclusion that it was not only the electric poles which are in the suit property, even there are sewerage lines going beneath the poles.

The plaintiff miserably failed to establish that the disputed property was part and parcel of the private property and was not a public property. The contention of learned counsel for the appellant that the electric poles are of the Punjab State Electricity Board and not of Municipal Council is of no help. Rather it is an admission that these poles are there in the suit property. It is further an indicator that the public property has been encroached upon.

The contention that notice was served on husband of the plaintiff is also of no help. Knowledge of notice has not been denied. Service on husband is valid service of notice, hence, no grievance can be raised.

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.

The cogent findings recorded by the learned first appellate

court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the learned first appellate court and the same deserves to be upheld.

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 Regular Second Appeal is dismissed, however, with no order as to costs.

November 21, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes