

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

**RSA No.1495 of 1988 (O&M)
Date of Decision: April 19, 2018**

Kulwant Singh

...Appellant

Versus

Amar Surjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.S. Bhatia, Advocate
for the appellant.

Mr. Purshotam Lal Singla, Advocate
for respondents No.1
and LRs of respondents No.2 and 3.

FATEH DEEP SINGH, J.

Initially plaintiffs-Amar Surjit Singh, Harjit Singh and Harbhajan Singh filed against the then defendants Kulwant Singh, Gurinderjit Singh and Darlabh Singh in a representative capacity, a suit for mandatory injunction directing the defendants to remove obstructions made by them by making walls etc. in the public street detailed in the site plan annexed with the plaint in the area of *abadi* of village Nurpur Hakiman, Tehsil Zira. The brief grounds were to the effect that the street in question is leading from the residential area to the *phirni* and that defendants have tried to encroach upon the same and, thus, obstructed the very passage of the people through the street. Defendants defended the suit on the grounds of

lack of locus standi, the suit being not maintainable and that the site in question is the ownership of the Gram Panchayat and, therefore, Civil Court has no jurisdiction over it. The trial Court on the basis of pleadings of the parties framed the following issues:-

1. Whether the defendants have made encroachment in the street ABCD in the site plan attached ? OPP
2. Whether the plaintiffs has no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the plaintiff is residing in the plots NO.39 and 40 since 1953? OPD
6. Whether the site plan filed is incorrect? OPD
- 6-A Whether the Court has no jurisdiction to entertain and try this suit? OPD
7. Relief.

The plaintiffs examined PW1 Rajdeep Singh, Draftsman who proved site plan Ex.P1; PW2 Om Parkash, Office Kanungo, who proved his proceedings and report Ex.P2, Ex.P3 and Ex.P4 followed by testimony of plaintiff Amar Surjit Singh as PW3, who proved Jamabandi Ex.P5, Akash Nagsha Masavi Ex.P6 and, thereafter, closed the evidence. The defendants examined Kulwant Singh/appellant the then defendant as DW1; DW2 Desa Singh, DW3 Jagdish Lal, Kanungo, who proved documents Ex.D1 and Ex.D2 and, thereafter, examined DW4 Gurinderjit Singh, who proved demarcation proceedings Ex.D3; DW5 Ajit Singh, Kanungo, who proved consolidation scheme Ex.D/5-A and closed their evidence.

The learned Court of Sub Judge, II Class, Zira through judgment dated 8.9.1986 returned the findings in favour of plaintiffs,

thereby, decreed the suit directing the defendants to remove the obstructions detailed in the findings. The unsuccessful defendants filed appeal in the Court of learned Additional District and Sessions Judge, Ferozepur, who through impugned judgment dated 13.5.1986 concurred with the findings of the trial Court and, thus, dismissed the appeal with costs. That is how, the parties are before this Court.

Heard learned counsel for the parties and perused the records of the case. The sole moot point that has arisen in the lengthy submissions of the two sides crystallised to the only issue whether defendants have encroached upon public street in question and, thus, caused injury and annoyance to the people at large. As is there in the submissions of learned counsel for the appellant as well as respondents and so is there in the pleadings and the evidence during the trial, it is not disputed that the site in question is a public street. Though, learned counsel for the appellant has sought to place reliance on **1985 PLJ 95 Sahaj Ram vs. Chhaju Ram and others; 1987 (2) PLR 459 Jarnail Singh and another vs. Gram Sabha of village Sarabha and others; 1985 PLJ 283 Ram Rakha Singh vs. Pritam Singh and others and 1982 PLJ 399 Chhaju Ram vs. Nand Lal** to hammer home the point that orders of the Court below were without jurisdiction but the same are factually at much variance from the case before this Court. It is the stand of the appellant/defendants that they are in adverse possession but ironically the defendants themselves have not pressed the same at the time of arguments before the trial Court nor any evidence worth the same could be led before the Court to this effect. The material question whether appellant can lay claim in such a manner through

illegal encroachment on public street which vests in the Gram Panchayat. The suit has been filed in representative capacity and this Court in judgment **1995(3) PLR 564 Mohan Lal vs. Mohan Singh** has considered such encroachment upon public properties and has remarked that Courts have to bear in mind as to the grant of injunction would be conducive or detrimental to public interest and further that Government lands belonging to the public at large and the community as a whole is entitled to enjoy the properties belonging to the Government. It was further remarked by his Lordship that in fact the Government holds property as a trustee of the people by the people in general, therefore, Courts have to be extremely cautious in such matters and possession of public property by such an individual or a group of individuals is no possession in the eyes of law and, therefore, such a person cannot claim any right on the basis of unlawful occupation of the public property and, therefore, Court would be justified in declining any assistance to such a person and similarly reliance was placed upon **1995(3) PLR 564 Mohan Lal vs. Mohan Singh** in **1996(3) RCR (Civil) 552 Babu Ram vs. Gram Panchayat** by this Court. More so, giving a vital interpretation to the public policy, especially, in the light of admitted stance that it is a public street where encroachment have come about the Court needs to be sensitive whenever such a person approaches the Court for equity and it is expected that person would come to the Court with clean hands, clear mind, clean heart and clean objects as the very principle that one who seeks equity must do equity. Since by encroaching upon a public street as is evident from the undisplaced documentary evidence shows that it to be a public street and report of the Local Commissioner, Om Parkash

Kanungo Ex.P3 had remained un rebutted by any means who has categorically stated which is supported by site plan Ex.P4 that defendants have encroached 3 karams of the public street and as it there the appellant the then defendants have not filed any objections to the report of the Local Commissioner and, thus, needs to be readily accepted as truthful and reliable document. In fact the Court had appointed Local Commissioner, a person with revenue background to ascertain and verify the fact whether there is any such encroachment and who after demarcation has done it so. Learned counsel for the appellant could not dispute the fact that it is public street catering to the needs of the residents of the village and even otherwise to the public at large and irrefutably evidence leads to only and only irresistible conclusion that there is encroachment by the appellant-defendants depriving the rightful access of the villagers and others to the main road to which this public street leads. The learned trial Court has rightly arrived at the findings on various issues and which has been correctly upheld by the learned first Appellate Court. The mere premise that has sought to be raised by learned counsel for the appellant that Civil Court has no jurisdiction could not impress this Court in view of the larger amplitude to the provisions of Section 9 CPC and the Civil Court has jurisdiction to try all the suits excepting suits of which their cognizance is either expressly or impliedly barred. The defendants by their illegal and unwarranted acts have caused injury and annoyance to the public at large including plaintiffs and, thus, in view of the legal maxim *Jura Natures* which means that it is law of nature that one should not be enriched by causing loss or injury to others. Therefore, this Court cannot look other way

around on such a frivolous submissions of the learned counsel for the appellant which tantamounts to subverting the due process of justice for the reasons of such conduct which is against the interest of justice. No other argument was raised before this Court. The findings of the two Courts below certainly are correct appreciation of law and facts and needs to be upheld. Thus, the present appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 19, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No