

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1314 of 1992 (O&M)

Date of Decision: December 11, 2018

Jai Dayal (since deceased) through L.Rs

...Appellant

Versus

Net Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate,
for the appellant.

AMIT RAWAL, J.

The present Regular Second Appeal at the instance of appellant-defendant No.1 has arisen out of the judgment and decree dated 08.04.1992, whereby the appeal of the respondent-plaintiff against the judgment and decree dated 18.02.1989 of the trial Court, whereby the suit was dismissed, has been allowed, in essence, the suit has been decreed.

Respondent-plaintiff instituted the suit for permanent injunction restraining the defendants from raising construction on the Rasta in dispute shown in red colour in the site plan Ex.PW2/A, situated in Mohalla Margshiud Narnaul, which was a public thoroughfare and used by the respondent-plaintiff and other public.

Defendant No.3 was proceeded ex-parte, whereas defendant Nos.1 and 2 appeared and contested the suit by pleading that the house of defendant No.1 had fallen down in the rainy season and when he started to reconstruct the house, plaintiff in order to prevent repair and construction,

filed the present suit. The factum of existence of Rasta was not denied but its placement. Filing of the suit was stated to be pressure tactics upon the defendants to withdraw the civil suit titled as “Jai Dayal Versus Net Ram” pending in the court.

Since the parties were at variance, the trial court framed the following issues:-

- “1. *Whether the alleged way in dispute is used by the plaintiff as alleged? OPP*
2. *Whether plaintiff is entitled to injunction as prayed for? OPP*
3. *Whether no cause of action is accrued to file the suit? OPD*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the suit is false and frivolous as alleged? OPD*
6. *Whether the plaintiff has no locus standi to file the suit? OPD*
7. *Relief.*

Plaintiff, in support of the pleadings, examined PW-1 Ram Chander, PW-2 Rajinder Kumar Saini Draftsman and himself as PW-3, whereas the defendants examined DW-1 Ranvir Singh, DW-2 Prem Chand, DW-3 Phool Chand, DW-4 Dharampal Clerk, Municipal Committee, Narnaul, DW-5 Kailash Chand Sharma Draftsman, DW-6 Kamal Singh another Draftsman and DW-7 Man Singh.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant-defendant No.1 submitted that the trial court, while dismissing the suit primarily relying upon the photographs Ex.D1 to Ex.D3, recorded a finding that the Rasta shown in red colour in the site plan was not thoroughfare from East to North but towards North. The trial court in

paragraph 11 of the judgment observed that the respondent-plaintiff failed to prove the existence of Rasta. According to the statement of PW-1, property of the plaintiff was shown as house of Net Ram in the site plan Ex.PW2/A, whereas according to the statement of PW-3 attorney, he spoke about the plot which was towards East of the Rasta. The Lower Appellate Court has made entirely a new case and refused to take into account the site plan produced on behalf of the appellant-defendant primarily on the ground that the same was not exhibited. Photographs Ex.D1 to Ex.D3 have been discarded in the absence of production of negatives.

There is no representation on behalf of the respondents despite service. Appeal is of 1992. Accordingly, I proceed to decide the same on merits.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain.

The evidence brought on record, referred to above, proved the existence of the Rasta as defendants failed to prove on record any photographs to establish that the part of the public passage was their own land. The aforementioned fact could have been proved by way of demarcation. Even in the site plan mark PA produced on behalf of the defendants, the suit land was shown as common. The photographs Ex.D1 to Ex.D3 rather have demolished the case of the defendants as it clearly depicted the existence of Rasta. Defendant has not appeared in the witness box. Instead DW-7 Man Singh, his attorney, appeared. Plaintiff has been prevented to cross-examine him with regard to the existing position as attorney would not be knowing the factual aspect. Site plan Ex.PW2/A has

been proved through the testimony of the witness vis-a-vis the evidence of the defendants. Even the Local Commissioner, vide his report Ex.PC and the site plan Ex.PD proved the existence of the Rasta. The aforementioned report, as per the provisions of Order 26 Rule 10(2) CPC is *per se* admissible. The defendants have not moved any application to controvert the same by seeking permission of the court to cross-examine the witness.

For the reasons mentioned above, finding of fact and law arrived at by the Lower Appellate Court, in my view, cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

It is made clear that there was no interim order against the defendants when the appeal was admitted.

December 11, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No