

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: July 13, 2018

1. R.S.A.No.625 of 1991 (O&M)

Sandal

...Appellant

Versus

Kashi Ram & others

...Respondents

2. R.S.A.No.2199 of 1991 (O&M)

Sanwal Ram & others

...Appellants

Versus

Sandal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.R.K.Girdwal, Advocate for
Mr.Sanjay Mittal, Advocate,
for the appellant in RSA No.625 of 1991 &
for respondent No.1 in RSA No.2199 of 1991.

None for the appellants in RSA No.2199 of 1991.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.625 and 2199 of 1991 as the common questions of law and fact are involved.

RSA No.625 of 1991 is arising out of the decision of Civil Suit No.1115 of 1986 titled as “Sandal Versus Kashi Ram & others”, whereas RSA No.2199 of 1991 from Civil Suit No.1116 of 1986 titled as “Sanwal Ram & others Versus Sandal & others”. In both the suits, the plaintiffs had sought perpetual injunction restraining the defendants therein from blocking the passage of 12' wide running in front of their houses. Since the relief

sought in both the civil suits was in respect of the same very property, the facts are being taken from RSA No.625 of 1991.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court dated 12.12.1990, whereby the suit decreed by the trial Court has been dismissed. In essence, the findings of the trial Court have been reversed.

Plaintiff instituted the suit for perpetual injunction restraining the defendants therein from blocking the passage in dispute measuring 12' wide on the premise that plaintiff owned a Nohra situated in Village Sirohi Bahali, which opened towards the West, whereas there was a 10' wide court yard/Rasta, which had been used by the plaintiff for the purpose of tethering the cattle, storing fodder etc. Even one Chhaper was also constructed in the said Nohra. The defendants were bent upon to block the passage measuring 10' existing towards the western side. It was further averred that the defendants had no right, title and interest in the aforementioned passage and in case they succeeded in their illegal designs, the purpose of filing the suit would be frustrated.

The defendants contested the suit on various grounds, i.e., locus standi, want of cause of action, maintainability of the suit and having not approached the Court with clean hands. On merits, it was denied that there existed a passage of 10' wide on the western side of the Nohra of the plaintiff. It was alleged that the site in dispute was exclusively owned and possessed by the defendants, whereas the plaintiff had broken the wall and wanted to create a new passage. There existed a wall of the defendants and they constructed a new one before the commencement of the suit. The defendants had left 6' wide passage from their land for their own use on

which the plaintiff had no concern.

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

- 1) Whether the plaintiff is entitled to the injunction as prayed for? OPP
- 2) Whether the court fee is deficient? OPD
- 3) Whether no cause of action has accrued to the plaintiff to file the suit? OPD
- 4) Whether the defendants are entitled to the special costs? OPD
- 5) Whether the suit is not maintainable in the present form? OPD
- 6) Whether the plaintiff has not come to the court with clean hands, if so, its effect? OPD
- 7) Whether the plaintiff is estopped from filing this suit by his act and conduct? OPD
- 8) Relief.”

The appellant-plaintiffs examined as many as four witnesses, PW-1 to PW-4, whereas the defendants examined DW-1 to DW-5.

The trial Court, on the basis of the evidence, decreed both the suits by holding that the plaintiffs had been able to prove the Rasta existing at the spot. Defendants preferred appeals before the Lower Appellate Court. The Lower Appellate Court reversed the findings of the trial Court and dismissed the suits. It is in these circumstances, two Regular Second Appeals at the instance of the plaintiffs have been filed.

Mr.R.K.Girdwal, Advocate for Mr.Sanjay Mittal, learned counsel for the appellant in RSA No.625 of 1991 and for respondent No.1 in RSA No.2199 of 1991, in support of the memorandum of appeal, submitted that the Lower Appellate Court, being the last Court of fact and law, committed illegality and perversity in setting-aside the well reasoned

judgment and decree of the trial Court, for, the plaintiff had proved on record the existence of 10' wide Rasta and as well as steps taken by the defendants for encroachment. The defendants have failed to prove the ownership and possession of the suit property. No reasons have been assigned for setting-aside the judgment and decree of the trial Court.

It was further submitted that site plan Ex.PA proved that the parties had left the passage for common use, therefore, the respondents could not be permitted to block the passage by raising construction.

There is no representation on behalf of the respondents.

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 the learned counsel for the appellant, for, the judgment and decree of the Lower Appellate Court is based upon the appreciation of oral and documentary evidence. For the purpose of claiming the perpetual injunction, the onus to prove the existence of 10' wide passage heavily laid upon the plaintiff, which has not been discharged. Rather PW-1, in cross-examination, admitted that the land was joint with their ancestors, but the same was partitioned in the year 1998-99 B.K. This fact had also been endorsed by Shiv Lal (DW1) and Abuta Ram (DW3).

There is no force in the argument of the learned counsel for the appellant that the cross-examination of PW-1 Shiv Lal had not been read in correct perspective. It is settled law no injunction can be granted against a co-share unless and until one of the co-sharers is in exclusive possession. The aforementioned view of mine is supported by the ratio decidendi culled out in **Bachan Singh Versus Swaran Singh, 2000 (3) RCR (Civil) 70 and**

Bhartu Versus Ram Sarup, 1981 PLJ 204.

The plaintiff has not been able to prove the exclusive possession. If at all, the parties had partitioned the property, the particulars of the partition have intentionally not been disclosed by the plaintiff. This fact surfaced only in the cross-examination. By assuming the property to have been partitioned, there must have been arrangement qua passage amongst the co-sharers to that effect, which has not seen the light of the day. In these circumstances, the Lower Appellate Court, being the last Court of fact and law, in my view, earnestly exercised the jurisdiction vested in it by reversing the findings. Even otherwise, the plaintiff has also miserably failed to place on record any document to prove that the defendants had blocked the passage.

This Court, while issuing notice of motion in RSA No.625 of 1991, vide order dated 20.3.1991, had granted the injunction as prayed for, but on 3.5.1991 the appeal was admitted without any interim stay.

For the reasons aforementioned, I am of the view that the judgment and decree of the Lower Appellate Court do not suffer from any illegality or there is any substantial question of law for arriving at a different opinion than the one arrived at. Resultantly, the appeals are dismissed.

July 13, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No