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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4263-2011 (O&M)
Date of decision : 02.05.2018

Ajit Singh

... Appellant(s)

Versus

The Gram Panchayat Village Pastana, Karnal

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay S. Kajla, Advocate for
Mr. Kulwant Singh, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgments and decrees rendered by the trial Court as well as the lower Appellate Court, whereby the suit of the appellant-plaintiff for permanent injunction restraining the defendant/Gram Panchayat from illegally and forcibly blocking the passage in Rect. No.37, Killa No.1, Rect. No.38, Killa Nos.4 & 5 and also for interfering in using of the passage by the plaintiff being easement of necessity, has been dismissed.

The plaintiff instituted the aforementioned suit on the premise that the plaintiff along with other co-sharers had been in possession of land measuring 70K-4M as described in the plaint. One Samadh Baba Bhagwan Gir Sahib was owner of the land measuring 69K-14M comprised in khewat No.1, wherein the plaintiff was having 781th share out of total 1404 share.

The aforementioned property was purchased by the plaintiff from Ishwar

Lal son of Ram Chander, who was allotted the land by the State of Haryana. The State of Haryana in turn acquired the same from Samadh Baba Bhagwan Gir Sahib as the land, aforementioned, was declared surplus in the hands of the Samadh. At the time of purchase of the property by the plaintiff, there was a passage in Rect. No.37, Killa No.1 and Rect. No.38 Killa Nos.4 and 5, which was being used as a passage as easement of necessity for approach to the property in Khasra No.21/2, 22, 23/2, 17, 18, 19 and other land. Apart from the aforementioned passage, there was no other passage. Since the defendant wanted to interfere in the aforementioned passage, a cause of action arose to seek the redressal of grievance by invoking the provisions of Section 9 of the Code of Civil Procedure.

The defendant-Gram Panchayat/respondent contested the suit by taking preliminary objections and on merits, it was admitted that previously the land was purchased by the plaintiff, which was declared surplus, but it was stated that the property was illegally and wrongly allotted to Ram Chander son of Sheetal. The khewats of the properties belonging to the plaintiff and defendant were different. The plaintiff concealed the fact that there was a *rasta* abutting killa No.24 of Rect. No.34 of Khewat No.130 as the defendants were exclusive owners of Khewat No.1 min, thus, the plaintiff had no right of passage through the property of the defendant and prayed for dismissal of the aforementioned suit.

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

1. *Whether the plaintiff is entitled for decree for permanent injunction as prayed for? OPP*

2. *Whether the suit of the plaintiff is not maintainable? OPP*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the plaintiff has not affixed the proper court fee on the plaint? OPD*
5. *Whether the plaintiff has not come to the court with clean hands? OPD*
6. *Whether the suit is not properly verified? OPD*
7. *Relief.*

The plaintiff in support of his case examined Ajit Singh as PW1, Lal Chand as PW2, Tara Chand as PW3 and brought on record the certain documents (Ex.P-1 to Ex.P12), whereas the defendant examined himself as the only witness and did not place on record any documents.

The trial Court as well as the lower Appellate Court dismissed the suit by noticing all the documentary evidence particularly *Aks Shijra* (Ex.P-12) to form an opinion that on the western side of *Aks Shijra*, there was already existing passage approaching the fields of the plaintiff.

Learned counsel appearing for the appellant-plaintiff submitted an application bearing CM No.4338 of 2013 under Order 41 Rule 27 was moved for placing on record Annexures A-5 and A-6 (i.e. information received under Right to Information Act and report dated 13.02.2013 along with *Aks Shijra*) by way of additional evidence which showed that on the western side of *Aks Shijra*, there was no passage, but watercourse. The said application has been allowed by this Court vide order dated 10.04.2013 while issuing notice of motion.

Learned counsel for the appellant-plaintiff further submitted that it is a fit case, where the matter is required to be remitted to the lower Appellate Court, for, there has been a misreading of the evidence. He has

drawn the attention of this Court to the report dated 13.02.2013 of the Naib Tehsildar, Nigadhu (Karnal), which reads thus:-

"Report

Sir

There is a 2 Karam wide Gair Mumkin Water Course in Village Pastana Sub Tehsil Nigdhu District Karnal towards western side of Rect No. Killa Nos.1-10-11-20-21 and towards southern side of Rect. No.21, Killa Nos.21-22-23-24-25 and western side of Rect. No.35, Killa Nos.1-10-11-20-21/1. Report is correct."

There is no representation on behalf of the respondent since long, despite service. The appeal is of the year 2011 and accordingly, I proceed to decide the appeal on merits.

On perusal of the aforementioned report, it is evident that there was a 2 karam wide Gair Mumikin watercourse in Village Pastana Sub Tehsil Nigdhu District Karnal, towards western side.

It would also be apt to reproduce the findings given in paragraph 11 of the judgment of trial Court and 15 of the judgment of lower Appellate Court, which reads as under:-

"Para 11 of the judgment of the trial Court

It will also be relevant to mention here that as per Aks Shijra Ex.P-12, the plaintiff certainly has access to his property from the passage in Khasra No.25/1, 1, 10, 11, 20 and 21 (as shown read colour in south and north direction). This being the position it does not lie in the mouth of the plaintiff to say that he has no other means of access of his property. Once there is no evidence on record to show that there is any passage in existence leading from the property of the defendant right upto the fields of the plaintiff, there can be no presumption that he has any right what to speak of any easementary, right about

the so called passage. The very existence of the passage remains doubtful as the plaintiff has failed to lead cogent evidence regarding the same. So far as the testimony of his two witness is concerned, it does not constitute cogent evidence as it does not find corroboration from the documents on record. In these circumstances, it is held that the plaintiff has failed to prove that there is any passage in existence leading from the property of the defendant right upto the property of the plaintiff in Khasra No.37, Killa No.1, Rect. No.38, Killa No.4 and 6. Therefore, his suit is not maintainable in this form and he has no locus standi to cause of action to seek any relief against the defendant, who is the owner of the property qua which the plaintiff is seeking an injunction.

Para 15 of the judgment of the lower Appellate Court

15. Above all, to decide the controversy as to the existence of the passage, Shri Vikash Bakshi, Advocate was appointed as Local Commissioner and was directed to report as to the existing estate of affairs accordingly, he examined the spot in the presence of both the parties and their counsel and submitted his report Ex.P8, supported by a site plan Ex.P-11 and as per the report Ex.P-8, supported by a site plan Ex.P-11 and as per the report of Local Commissioner there was a sanctioned passage existing in Khasra No.38/1, 2 and 3, which is linked with a metalled road on the Western side, but it ends at the boundary line of the Khasra Number 38/3 and after that the land of the Gram Panchayat comprising in Khasra No.38/4, 38/5 and 37/1 is existing having no concrete or otherwise existing passage but he found that there were some tyre marks suggesting the movements of tractor or buggi parked from the Northern side of the land of Gram Panchayat having a small length as shown as letters C to D. As such, from the report of Local Commissioner, it is proved that no passage is existing in the disputed land of the respondent

Gram Panchayat. Although learned counsel for the appellant relied upon Khasra Girdawari and a report of Patwari to show that no passage is existing but no reliance can be placed on the Khasra Girdawaries which are of the year 2003-04 and which has been not supported by the jamabandi and which are on the contrary report of Local Commissioner, thus, clearly shows that those have been made by the Patwari in collusion with the plaintiff just to create evidence and thus, cannot be relied upon. Above all, as observed by the learned lower Court and as is clear from the copy of Aks Shijra Ex.P-12, there already exists a passage on the western boundary of Khasra No.35/1, 10, 11, 20 and 21, which links with the land of the appellant-plaintiff that he has no other passage to approach his land, is also totally misconceived and against the factual position."

On juxtaposition of the aforementioned findings as well as report of the Naib Tehsildar, it is evident that the Courts below have misread *Aks Shijra* (Ex.P-12) by forming an opinion that on the western side, there was a passage, therefore, while not agreeing with the contentions, the Courts below observed that there was a passage on the western side and therefore, no hindrance and impediment would have caused to the plaintiff to approach his fields.

Keeping in view the aforementioned facts, I am of the view that such finding is not only perverse, but misreading of the evidence as *Aks Shijra*, which has been placed on record as Annexure A-4 and before the Courts below as Ex.P12, shows that on the western side, there is a watercourse. The watercourse has been misread as passage, thus, it is a fit case, where the matter is required to be revisited.

As an upshot of my observations, the judgment and decree of the lower Appellate Court is set aside being not sustainable in the eyes of

law and the matter is remitted to the lower Appellate Court being the last court of fact and law to decide the appeal afresh keeping in view the aforesaid observations and the documents placed on record as expeditiously as possible, much less, after issuing notice to the parties to the *lis*.

The parties or through their counsel are directed to appear before the lower Appellate Court on 25.05.2018.

The documentary evidence allowed by this Court be also permitted to be placed on record in accordance with law before the lower Appellate Court.

The present regular second appeal stands disposed of in the aforesaid terms.

02.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**