

In the High Court of Punjab and Haryana at Chandigarh

RSA-1329 of 2016(O&M)
Date of Decision:13.12.2018

Surinder Singh

---Appellant

vs.

Balbir Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. M.S.Dhami, Advocate
for the appellant

Mr. Jag Nahar Singh, Advocate
for the respondent

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 27.7.2015 passed by the Additional District Judge, Hoshiarpur whereby appeal against the judgment and decree dated 25.4.2014 passed by the Additional Civil Judge (Senior Division), Dasuya (hereinafter to be referred to as “the trial court”) has been allowed and suit filed by the appellant-plaintiff for grant of permanent injunction was dismissed and counter claim filed by the respondent-defendant was decreed.

In the instant case, bone of contention is the street situated towards Eastern side of house of appellant-plaintiff whereas house of the

respondent-defendant is towards Southern side of the said street. The gate of house of the respondent-defendant opens in the street in question that is ultimately connected with street on the extreme Northern side shown as bricks paved street in site plan Ex. P1 produced by the plaintiff, gali in the site plans Ex. D1 and D5.

The appellant-plaintiff has installed a gate in the Eastern wall of his house that opens in the street in question. The appellant-plaintiff has filed the suit for permanent injunction restraining the respondent-defendant from removing the gate, shown in red colour and marked 'AB' in the site plan. The respondent-defendant has filed the counter claim directing the appellant-plaintiff to remove the said gate.

The case of the appellant-plaintiff is that he raised boundary wall of his residential house about three years back and installed iron gate in the boundary wall that opens towards property of the plaintiff. There is a street which is 5 feet 6 inches in width and 89 feet in length and house of the plaintiff is situated towards Western side of the street shown in green colour in the attached site plan. The house of the defendant is situated towards Southern side of street and the defendant affixed gate around boundary wall of his house, shown in black colour. Towards Eastern side of the street, there is house and haveli of Charanjit Singh son of Jaswant Singh and Charanjit Singh has kept a ventilator shown in the site plan. Some portion of the street is in khasra number and the remaining portion is gair mumkin rasta share-am shown in revenue records. The street is being used by the plaintiff since times immemorial and defendant is also using the street. None else uses the street. The plaintiff has kept a gate for ingress

and outgress to his house and the defendant is threatening to remove the gate illegally and forcibly.

The defendant-respondent filed the written statement and counter claim on the premise that the plaintiff has raised boundary wall 30 years back but installed iron gate in his boundary wall six months back by taking advantage of absence of the defendant. The plaintiff has no right, title in the street shown in green colour marked 'ABCD' of the defendant. Charanjit Singh has no title or interest in the street. Ventilator is in existence with consent of the defendant. By way of counter claim, he has prayed for issuance of direction to the plaintiff to remove iron gate installed in the street.

The plaintiff filed reply to the counter claim, reiterated his stand taken in the plaint while controverting the allegations with regard to entitlement of the defendant to seek mandatory injunction.

The controversy between the parties led to framing of following issues by the trial court:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
2. Whether the defendant is entitled to mandatory injunction as prayed for?OPCC
3. Whether the counter claim of defendant is maintainable?OPCC
4. Whether the counter claimant has locus standi to file the counter claim?OPCC
5. Relief

To prove his case, the plaintiff examined himself, Vijay Kumar Draftsman PW2 and Tarlochan Singh PW3. To rebut evidence of the plaintiff, defendant Balbir Singh appeared as his own witness and examined Madan Singh DW2, Kashmira Singh DW3, Simran Singh DW4. The defendant also tendered into evidence copy of roznamcha wakiati Ex. D6 and Aks Shajra of Khasra No. 214 Ex. D7.

The trial court answered issue No. 1 in favour of the plaintiff and issue No. 2 was decided against the defendant-counter claimant, in view of discussion on issues No. 1 and 2 jointly whereas issues No. 3 and 4 were answered against the defendant and eventually suit of the plaintiff was decreed and counter claim of the defendant was dismissed.

The first Appellate court reversed the judgment and decree passed by the trial court and resultantly suit filed by the plaintiff was dismissed and counter claim preferred by the defendant was allowed by holding that a part of street is consisting of khasra No. 214 that belongs to the gram panchayat whereas the remaining part of the street in which the plaintiff has installed gate at point 'AB' belongs to the respondent-defendant, therefore, the plaintiff cannot maintain his claim qua his right to install the gate and the same is liable to be removed.

Counsel for the appellant has submitted that the first Appellate court seriously erred and wrongly set aside the judgment and decree passed by the trial court. It is vehemently argued that it has been proved on record that Charanjit Singh son of Jaswant Singh who has his property towards Eastern side of the street in question opened ventilator towards the street

and the same has not been closed by him even after his having closed the poultry farm set up in that property. Charanjit Singh has also installed a parnala towards the street but the respondent-defendant has not initiated proceedings against said Charanjit Singh for closure of ventilator and parnala. The respondent-defendant had not produced any documentary evidence that he is owner of land underneath his house situated towards Southern side of the street in question much less the land underneath the street having been left by him for approaching the street in khasra No. 214 and thereafter the bricks paved street, shown in the site plan Ex. P1. It is further argued that alleged agreement between Charanjit Singh and the respondent has no bearing on rights of the plaintiff as admittedly the plaintiff is not a privy to said agreement nor he is a witness thereto.

Counsel representing the respondents has supported judgment of the first Appellate Court with the submission that the trial court appointed a local commission and he submitted report Ex. D2 alongwith documents Ex. D4 and site plan Ex. D5. The appellant-plaintiff did not file objections against the report meaning thereby that he has accepted correctness of the report as well as site plan Ex. D5. Document Ex. D4 has been signed by the plaintiff-appellant who otherwise has admitted that demarcation was conducted at the spot in his presence and report has been prepared by the local commission.

I have heard counsel for the parties, perused the paper book and records.

The local commission appointed by the court gave a report that Southern end of the street in question is comprised of khasra No. 214 that

belongs to the gram panchayat and the remaining portion marked 'EFHI' falls within lal lakir of the village.

There is no dispute between the parties that house of defendant Balbir Singh is towards Southern side of the street in question and gate of the house opens in the street. Towards Western side of the street, there is house of Surinder Singh plaintiff and he has installed a gate in the Eastern boundary wall of his house. It is also not denied that there is another gate of house of Surinder Singh that opens towards Northern side of his house. On the Eastern side of the street, there is property of Charanjit Singh who has opened a ventilator in the Western wall of his house. The report of the local commission shows that there is a *nali* towards Eastern side of the street and water from the house of Balbir Singh is discharged through this *nali*.

The appellant-plaintiff appeared in the witness box and in his cross examination he has admitted that towards Eastern side of his house, there is property of defendant Balbir Singh. A relevant extract from his cross examination, reads as follows:-

“A part of my house is in khasra number and a part is in lal lakir. It is correct that towards Eastern side of my house, there is land/property of Balbir Singh and towards Southern side thereof, Balbir Singh has constructed his residential house. It is correct that towards Northern side of land/property of Balbir Singh, there is land of Amipur Patti of his village which is rasta share-am.”

When the aforesaid extract from cross examination of Balbir

Singh is read conjointly with the report prepared by the local commission, it becomes an established position of the case that the appellant-plaintiff has himself admitted that portion of the gali is land of Amipur Patti used as rasta share-am and remaining is the land/property of Balbir Singh. The appellant-plaintiff has failed to produce satisfactory much less cogent evidence to establish his plea raised in para 4 of the plaint that remaining portion of the street is gair mumkin rasta share-am recorded as such in the revenue record. However, plea of the appellant-plaintiff that some portion of the street is khasra number gets substantiated from the report submitted by the local commission as well as site plan Ex. D1 proved by the defendant. The respondent-defendant in para 4 of the written statement has specifically pleaded that public street is only 27 feet in length from Western side and 30 feet in length from Eastern side as shown in the site plan of the defendant. Taking a cumulative view of the evidence on record, it can safely be held that Northern part of the street in question is comprised of khasra No. 214 measuring one marla that belongs to Amipur patti whereas remaining part of the street is neither rasta share-am nor the appellant-plaintiff has a right to install his gate towards said street which actually belongs to the defendant, in view of admission made by the plaintiff himself. This apart, there is nothing on record suggestive of the fact that area of the street beyond khasra No. 214 is maintained by the gram panchayat or the gram panchayat has installed any lights etc. in said part of the street. On the contrary, there is *nali* only on one side of the street meant for draining water only from house of the defendant.

With regard to ventilator of house of Charanjit Singh towards

the street, respondent has pleaded that the same is in existence with his (defendant's) consent. Defendant has proved agreement Ex. DW2/A between Kartar Singh, his father and Charanjit Singh etc. As per the agreement, it was agreed between Charanjit Singh, Gurmit Singh on one hand and Kartar Singh on the other side, with the intervention of panchayat, that Charanjit Singh etc. would close the ventilator when they will close their business of poultry. The witnesses of the agreement have proved that claim of Sh. Kartar Singh in regard to street in question was accepted by Charanjit Singh and the attesting witnesses including Sarpanch and a member of panchayat at the relevant time. No doubt, the appellant is not a party to agreement Ex. DW2/A but it negates plea of the appellant that since Charanjit Singh has opened ventilator of his house towards the street in question it lends support to his plea that the street in question is a rasta share-am. Even otherwise, plea of the appellant in this regard gets falsified and belied from averments in the plaint that street is being used by him and the defendant. Analyzed from any angle, it can safely be held that findings recorded by the first Appellate Court are based on correct appreciation of materials on record and no error much less perversity can be noticed in the judgment of Appellate court reversing the one passed by the trial court.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed with costs. However, nothing stated hereinbefore shall enure to benefit of the respondent-defendant if there is ever any dispute between the defendant and the gram panchayat with regard to the street in question as the aforesaid findings have

been recorded without any opportunity of being heard to the gram
panchayat.

(Rekha Mittal)
Judge

13.12.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No