

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

**R.S.A No.1414 of 2016(O&M)
Date of decision :16.08.2018**

Bharat Singh

..... Appellant

Versus

Kartar Singh and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikrant Rana, Advocate
for the applicant-appellant.

LISA GILL,J

The present appeal has been filed against the judgement and decree dated 10.11.2009 passed by the learned Addl. Civil Judge (Sr. Division), Bhiwani, whereby the suit filed by the plaintiff-appellant has been dismissed as well as judgement and decree dated 30.05.2015, passed by the learned Additional District Judge, Bhiwani, whereby his appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff filed a suit for permanent injunction against the defendants-Kartar Singh and Gram Panchayat, Durjanpur, restraining them from constructing any passage/Rasta in front of his door and for restraining them from demolishing the Platform (Chabutra) constructed in front of his house. Appellant-plaintiff claimed to be the owner in

possession of the house in question as detailed in the plaint. It was pleaded that he had constructed a door towards the southern side of his house towards the Johar as well a platform (Chabutra) in front of his house. Defendant no.1, it was pleaded wished to construct a passage in front of the appellant's house by demolishing the platform (Chabutra) constructed by the appellant. Hence the present suit was filed.

Both the defendants resisted the suit while filing separate written statements. Respondent no.1 pleaded that the plaintiff had constructed his house near the '*Johar*' adjacent to the public passage towards the eastern side of his house. The plaintiff, it was stated was not the owner of the land in question as the land belongs to Gram Panchayat, Durjanpur. Site plan attached by the plaintiff was stated to be incorrect as the public passage leading towards the '*Johar*' adjacent to the plaintiff's house was not reflected in the site plan. It was pleaded that the suit was filed by the plaintiff in connivance with the Gram Panchayat.

Respondent no.2-Gram Panchayat, averred that the plaintiff had constructed his house on the edge of the '*Johar*'. Respondent no.1 as well as one Ram Kumar son of Chandu had also constructed their *Gher*. The door of their *ghers* opened in different streets. It was further stated that the door of the plaintiff's house opens towards the eastern and southern side. There is a '*Shamlat Johar*' towards the southern side of the plaintiff's house, which is situated 25-30 feet away from the platform (Chabutra) erected by the plaintiff. Doors of the plaintiff's house opens towards the '*Johar*' on the southern side. Door of the plaintiff's plot also opens in the same direction, whereas the doors of the house and plot of

respondent no.1 opens towards the western side in the public street. The Gram Panchayat had no intention to demolish the Chabutra. Whenever the *pucca* passage or permanent drain is to be constructed the same shall be done on Panchayat land. The plaintiff and respondent no.1, it was averred had no concern with the ownership and possession of the land of 'Johar', which was under the ownership of the Gram Panchayat. The only interest of the Gram Panchayat was to ensure that none should encroach upon Panchayat land in any manner. It was thus prayed that the suit be dismissed.

Replication was not filed. From the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled for a decree for permanent injunction against the defendants as alleged?OPP
2. Whether the plaintiff has no locus-standi nor has any cause of action to file the present suit?OPD
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the suit is bad for non-joinder and mis-joinder of parties?OPD
5. Whether the plaintiff has filed the present suit in collusion with defendant no.2?OPD
6. Whether the plaintiff has suppressed the material facts from the Court and as such suit is liable to be dismissed as alleged in Para no.8 of the preliminary objections?OPD
7. Relief.

Both the parties lead oral as well as documentary evidence in support of their respective claims.

Learned trial Court after considering the evidence on record, facts and circumstances of the case, dismissed the suit filed by the plaintiff-appellant on 10.11.2009 while holding that the appellant was not able to prove his ownership over the platform (Chabutra) in question and

was himself an encroacher upon the *shamlat* land.

Learned Additional District Judge, Bhiwani, allowed the plaintiff-appellant to lead additional evidence. Jamabandi for the year 2004-05 being a public document was admitted in evidence. As per the said jamabandi, the Khewat no. is 2750 and Khatoni no. 3341 and ownership is '*Abadi Deh Wasideh*' and possession of the '*Washindgan-Deh*' and Khasra no. 573 shows the total land as 221 Kanals 13 Marlas '*Gair-MumkinAbadi*', Durjanpur.

Appeal preferred by the appellant-plaintiff was also dismissed by the learned Additional District Judge, Bhiwani, vide impugned judgement and decree dated 30.05.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently urges that the appellant-plaintiff has succeeded in proving that he has constructed the platform (Chabutra) on his own land. Reference is made to the statement of PW-4-Mange son of Rameshwar to the effect that the plaintiff and defendant no.1 are his neighbours. There is 10 to 21 feet of land in between the house of the plaintiff and the '*Johar*' on which the plaintiff has constructed his platform (Chabutra). Both the learned Courts below, it is submitted have grossly erred in dismissing the suit filed by the present appellant-plaintiff.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Evidence on record clearly reflects that the plaintiff-appellant was unable to prove his ownership over the land on which he

has constructed the platform (Chabutra). It is clear that the plaintiff himself has constructed the platform (Chabutra) upon *Shamlat* land which doubtlessly vests with the Gram Panchayat.

PW-5-Kanwarpal Singh, Draftsman, Court Complex Bhiwani, who prepared site plan Ex.P-1 of the plot, stated in his cross-examination that he never saw the documents regarding ownership of the platform(Chabutra) in question. To the same effect is the statement of PW-6-Johnpal Singh Chauhan, Advocate, Local Commissioner, appointed by the learned Courts. No revenue record was produced by the plaintiff to show that the land in question belongs to him. Appellant seeks permanent injunction with regard to the land of which he claims to be the owner in possession. The appellant's claim remains unsubstantiated. Jamabandi for the year 2004-05 does not advance his case.

PW-2-Dharampal son of Ramdhan, deposed that he did not know regarding the ownership of the suit property. PW-3-Umed Singh son of Khem Ram, deposed that there is no passage to approach towards the plot of defendant-Kartar Singh and Ram Kumar Sharma. It is mentioned by PW-3 that street has been wrongly reflected in the site plan Ex.P-1. The oral and documentary evidence on record does not advance the case of the appellant-plaintiff in any manner. It is rightly observed by the learned trial Court that none of the plaintiff's witnesses have stated anything about the ownership of the plaintiff over the platform (Chabutra) in question. The plaintiff has been held to be himself encroaching upon the land of the Gram Panchayat. Thus, the suit filed by him has been rightly dismissed.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 10.11.2009 and 30.05.2015 passed by the learned Addl. Civil Judge (Sr. Division) Bhiwani and learned Additional District Judge, Bhiwani, respectively, which warrant any interference by this Court.

There is a delay of sixty two (62) days in filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

16.08.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No