

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2970 of 2016 (O&M)

Date of Decision: November 26, 2018

S.M.Ahujas (deceased) through L.Rs & others

...Appellants

Versus

Raj Rani & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Arun Nehra, Advocate &
Mr. Sant Kashyap, Advocate,
for the appellant.

Mr. Rakesh Nagpal, Advocate,
for the caveators.

AMIT RAWAL, J.

CM No.16215-C of 2018

Prayer in the application is for bringing on record the legal heirs of appellant No.3 Satish Kumar Ahuya, who is stated to have died on 18.01.2018. The application is supported by an affidavit.

The applicants mentioned in Para No.2 of the application are impleaded as legal heirs of appellant No.3 for the purpose of prosecuting this appeal only.

CM stands disposed of.

RSA No.2970 of 2016

Appellant-defendants assailed the judgment and decree of the Lower Appellate Court, whereby while reversing the judgment and decree of the trial court dismissing the suit, decreed the same.

Plaintiffs sought mandatory injunction along with permanent injunction against the appellant-defendants in respect of land comprising in Khasra No.29, Killa No.13/1/1(3-8) situated in Village Ajronda, District Faridabad. It was alleged that defendant No.1 for himself and on behalf of defendant Nos.2, 3 and 4 as General Power of Attorney sold the specific area of 400 sq.yards to M/s Dhawan Industries vide sale deed dated 17.10.1997. As per the aforementioned sale deed, access to a passage measuring 20 feet wide which was running from East to West was provided. The defendants blocked the common passage by constructing a platform which is causing obstruction in the daily work of the plaintiffs and despite numerous requests, no heed was paid.

Appellant-defendants opposed the suit by taking plea of estoppel. On merits, the factum of the sale deed was not denied, but it was alleged that the measurement was 51'3"-70'3". As per their site plan, plaintiffs were provided the passage marked as I,J,JD-1. Two subsequent sale deed were executed by the defendants, one on 24.06.1998 and another 26.08.1998 and in such circumstances, the plaintiffs had already egress and ingress from the main service road of NH-1. The common passage was not necessary for the plaintiffs for enjoyment as their own property has access to the main Mathura road.

On the preponderance of the evidence, the trial court framed the following issues:-

- "1) Whether the plaintiffs are entitled to a decree of mandatory injunction as prayed for? OPP*
- 2) Whether the plaintiffs are entitled to a decree of permanent injunction as prayed for? OPP*
- 3) Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD*

- 4) *Whether the plaintiff is estopped from filing the present suit by his own act, conduct and acquiescence? OPD*
- 5) *Whether the suit has not been filed by the proper person? OPD*
- 6) *Whether the plaintiff has not come to the court with clean hands? If so to what effect? OPD*
- 7) *Whether the suit is time barred? OPD*
- 8) *Relief.”*

Plaintiffs examined two witnesses and brought on record documents Ex.P1 to Ex.P3, Ex.PW3/A to Ex.PW3/C, whereas the defendants examined three witnesses and brought on record documents Ex.D1 to Ex.D16 and Ex.DW2/A , Ex.DW3/A to Ex.DW3/H.

The trial court did not find favour with the plaintiffs and dismissed the suit by holding that it was not case of easement by grant as the intention of the defendants at the time of first sale deed was to provide passage having an access from the main road. There was no incorporation of exclusive Rasta/passage to the defendants. The other sale deeds Ex.D1 and Ex.D2 executed by both the parties remained silent about usage of the property, which was sold vide sale deed Ex.P1, but in appeal as noticed above, suit has been decreed.

Mr. Arun Nehra, learned counsel appearing on behalf of the appellant-defendants submitted that the Lower Appellate Court has erroneously relied upon the contents of the sale deed, i.e., subsequent sale deed Ex.D1 to be in continuation of sale deed Ex.P1. There was no such intention or recital with regard to the separate passage. The Lower Appellate Court has failed to appreciate that the Chabutra shown in the site plan of the defendants was constructed after the sale deed, whereas it was in existence much prior to the sale deed. Evidence produced on record

conclusively proved that the plaintiffs were neither the lawful owner of 20 feet wide private passage nor had any lawful right to use. After the execution of the sale deed dated 17.10.1997 Ex.P1, two other sale deeds Ex.D1 and Ex.D2 of 1998 were executed in favour of the plaintiffs, in which it was specifically mentioned that property on northern side was that of the plaintiffs and they have no right to use the passage in question. In such circumstances, the equity did not lie in favour of the plaintiffs.

In order to lend credence to the aforementioned argument, reliance has been laid to the judgment of the Hon'ble Supreme Court in **Krothapalli Satyanarayana Versus Koganti Ramaiah and others, 1984 (2) SCC 439** to contend that in case a party fails to seek removal of an encroachment to be in existence for almost 8-9 years, the law of acquiescence would apply.

It was further pointed out that vide sale deeds dated 26.11.1997 (Ex.P4) and 18.11.1997 (Ex.P5), the plaintiffs had sold the land to Balwant Singh and Jaswant Singh, where, as per the recital, boundaries of the area were mentioned as: North: remaining property measuring 470 sq.yards of sellers and thereafter industrial unit of M/s Auto Industries, South: remaining property (Godown) of seller and 24½ ft wide common passage having length of 106 ft connecting at T-point to 20 ft wide common passage leading Delhi-Mathura service road, East: Property bearing Mosuma No.6-B/15A and West: Property of others (DEEGAR JAIDAD). In other words, it was submitted that had there been a passage on the northern side, it would not have been mentioned that remaining property of 470 sq.yards. There would have been reflection of passage as indicated in the site plan and as well as in the sale deed Ex.P1.

I am afraid that the aforementioned argument is not sustainable as for the adjudication of the lis and for appreciation of the argument of Mr. Nehra, it would be in the fitness of things to extract the relevant portions of the sale deeds Ex.P1 dated 17.10.1997, Ex.D1 dated 24.06.1998 and Ex.D2 dated 26.08.1998, which read thus:-

“Sale deed Ex.P1

Sale consideration Rs.2,80,000/- Stamp papers Rs.43,000/-

I, Surender Mohan Ahuja s/o Sh.Rai Sahib Kundan Lal Ahuja

xxx

xxx

xxx

The boundaries of the area sold are as follows:-North: 20 ft wide common passage (which leads to main road); South: Industrial property of purchaser; East: property of others bearing Mosuma No.6-B/15A [DEEGAR JAIDAD]; West: Remaining property of seller and thereafter main road. I will be responsible for providing 17 feet wide passage to the purchaser from my remaining land situated in the West side leading to the main road. This deed has been scribed in my full senses so that it may serve the purpose when needed. Dated 17.10.97.

xxx

xxx

xxxx

Sale deed Ex.D1

Sale consideration Rs.2,80,000/- Stamp papers Rs.43,400/-

I, Surender Mohan Ahuja s/o Sh.Rai Sahib Kundan Lal Ahuja

xxx

xxx

xxx

The boundaries of the area sold are as follows: North: Plot of Sellers; South: Property of M/s Dhawan Industries; East: property measuring 400 sq.yards of seller which has already been sold to sellers. I will be responsible to provide to the purchaser a 17 feet wide passage leading to main road from my remaining land on western side. Dated 24.6.1998”

xxx

xxx

xxx

Sale deed Ex.D2

Sale consideration Rs.3,31,000/- Stamp papers Rs.51,300/-

Seller: Surender Mohan Ahuja, himself & as attorney

xxx

xxx

xxx

North: Share in property of sellers; South: Property of M/s Dhawan Industries; East: share in property of purchaser which was sold to M/s Dhawan Industries; West: Road.”

Dated: 26.8.1998

xxx

xxx

xxx”

On cumulative reading of the aforementioned paragraphs, it leads to an irresistible conclusion that the appellant-defendants- vendors of the plaintiffs had described on the northern side, a 20 feet wide common passage for the plaintiffs and had also undertaken to provide 17 feet wide passage to the purchaser for the remaining land situated on the western side leading to the main road. Subsequent sale deeds are in respect of the land situated towards the western side and, therefore, the defendants cannot be permitted to wriggle out from the acknowledgment reflected in the registered documents. The injunction is only confined to the removal of the Chabutra shown in the site plan as JKLM. For the sake of brevity, operative part of the decree of the Lower Appellate Court reads as under:-

“It is ordered that impugned judgment and decree are set aside. Suit of appellant-plaintiffs succeeds and a decree of mandatory injunction directing respondents-defendants to remove said platform JKLM from common passage GAFH is passed. Respondents-defendants are further restrained from blocking common passage in any manner. Appeal is accepted with costs accordingly.”

The parties may tell a lie but the documents always reflect the truth. It is a classical case where the defendants after having provided a passage raised the Chhabutra on the side of the plaintiff shown as JKLM subsequent to the sale which had caused hindrance and the injunction

granted by the Lower Appellate Court, in such circumstances, is the most appropriate and innocuous. The defendants could not comprehend the contents/recital of the sale deeds in correct perspective. In such circumstances, the respondent-plaintiff had no other option but to approach the Court. The courts are meant to render justice on the basis of the documentary evidence and as well as on equity.

There is no dispute to the ratio decidendi culled out in the judgment cited supra, but the fact of the matter is that the plaintiffs have miserably failed to prove on record as to on which date and year construction of the Chabutra was raised, thus, law of acquiescence sought to be projected in view of the judgment cited supra would not be applicable.

The argument of the learned counsel for the appellant-defendant is not able to bring the case within the realm of perversity to form a different opinion than the one arrived at. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 26, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No