

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

**RSA No.2950 of 2015 (O&M)
Date of Decision : 15.05.2018**

Joginder Singh

.....Appellant

Versus

Satpal Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Raj Kumar Kakkar, Advocate for the appellant.
ARUN PALLI, J. (Oral)

Suit as also the counter claim was decreed by the trial Court vide judgment and decree dated 24.12.2013. The respondent/defendant did not assail the said decree. But as the appeal preferred by the appellant/plaintiff against the same was dismissed by the appellate Court on 21.01.2015, he is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the plaintiff filed an injunction suit restraining the defendant from illegally and unlawfully blocking the passage through the street marked as ABC in the site plan appended with the plaint which the plaintiff used for ingress to and egress from his house, and also from obstructing the plaintiff from peaceful usage of the passage. The case set out by the plaintiff was that he was living in the house bearing M.C. Unit No.1147, for the past more than 30 years and had a right of passage through the street marked as ABC in the site plan. The house of the

defendant was situated on the northern side of the house of the plaintiff and he intended to obstruct the plaintiff's passage through the portion marked as B-C of the street, referred to above, without any justifiable cause. Thus the suit.

In the written statement filed on behalf of the defendant it was pleaded that plaintiff himself was guilty of having encroached upon the public passage marked as JKLNPM in the site plan appended with the written statement. In fact, on the western side of the house, M.C. Unit No.1147, of the plaintiff there existed a street marked as 'MLPN' in the site plan. And, on the other side of the portion 'MLPN', there existed another property No. 1145, that was owned by the wife of the plaintiff. The plaintiff's right to use the passage 'JKLM' was conditional with the defendant's reciprocal right to use the passage marked as 'MLPN', for even the said portions formed part of the public passage along with the site 'JKLM'. Therefore, the plaintiff could ask for injunction only, if he was ready to vacate the passage 'MLPN' by removing the gate fixed at point 'LM' and the toilet shown in the red colour in the site plan. By way of counter claim the defendant prayed for mandatory injunction directing the plaintiff to remove the encroachment and vacate the passage 'MLPN'.

As indicated above, the trial Court decreed the suit of the plaintiff and restrained the defendant from blocking the plaintiff's passage through the public street marked as 'ABC' in the site plan Ex.P4. Likewise, the plaintiff was directed to vacate the portion marked as 'MLPN' by removing the flexible iron gate fixed at mark 'ML' as also the

toilet constructed along the wall marked as 'NP' in the site plan Ex.D4.

Since the defendant did not question the decree rendered by the trial Court, the injunction granted against him and in favour of the plaintiff has since become final. Thus, the controversy that survived for determination was with regard to portion marked as 'BC' in the site plan Ex.P4 or 'MLPN' in the site plan Ex.D4. While the case set out by the plaintiff is that the disputed site is a private property whereas the defendant claims it to be part of the public passage 'JKLPNM' depicted in the site plan Ex.D4.

Ex-facie, on a consideration of the matter in issue and the evidence on record both the Courts had concurrently concluded that the entire portion marked as 'JKLPNM' was a public passage carpeted by the Municipal Council, Jalalabad(W). The Municipal Council, Jalalabad had laid drains along this passage to carry the sullage water. The sewerage lines were laid up to the toilet shown in the red colour in the site plan Ex.D4. The plaintiff had fixed a gate at point 'LM' without any right or authority as the passage 'MLPN' was indeed a part of the public passage 'JKLPNM'. In fact, the plaintiff had two houses, bearing Nos. 1145 and 1147. While the House No.1145 was in the name of the plaintiff's wife Surjit Kaur, who had purchased the same from Santosh Kumari, vide sale deed dated 4.12.1986 (Ex.D1), and the house No.1147 was in the plaintiff's own name which he purchased from Bhagwan Singh son of Nand Singh pursuant to a sale deed dated 31.08.1970 (Ex.D2). The disputed portion marked as 'MLPN' lay in between these two houses, i.e.

House Nos. 1145 and 1147. Perusal of the sale deed regarding House No.1145 (Ex.D1), revealed that a street was in existence on the eastern side of the said house. Similarly the sale deed qua House No.1147 (Ex.D2) showed a street on the western side of the said property. Thus, it was concluded that there existed a street between the two houses, i.e. 1145 and 1147, purchased by the plaintiff and his wife. Not just that the plaintiff himself impliedly admitted in his cross-examination the existence of the portion 'MLPN' as a public passage. He also conceded that in the sale deed Ex.D1 (House No.1145), there was a reference to the street on the eastern side of the said property. Likewise, in the sale deed (Ex.D2) a street was shown to be in existence on the western side of the House No.1147. Although, the plaintiff claimed to have purchased the disputed portion marked as 'MLPN' on the basis of an oral transaction for a consideration of Rs.200 and the said transaction was alleged to have taken place in the year 1971 i.e. after about 6 months of the execution of the sale deed dated 31.08.1970 (Ex.D2), but significantly he also conceded that he had nothing to prove his ownership or title as regards the portion 'MLPN' in the site plan Ex.D4. Further, Gurcharan Singh PW3, clarified in his cross-examination that he lived in the street in question since his birth up to the year 1970, and the house No.1145, 1146, 1147 and 1147/2 including the street in question formed part of one big house, and later his father carved out four separate plots therefrom. The street marked as 'JKPN' in the site plan Ex.D4 was carved for providing passage to the vendees of those plots. Concededly, the

properties No.1146 and 1147/2 were owned by defendant's wife Smt. Harjinder Kaur and the defendant with his wife was residing in the said properties. Thus, in the given situation the only and the inevitable conclusion that could be reached: that the portion 'MLPN' was a part of the public street 'JKLPNM'. Learned counsel for the plaintiff merely reiterated the submissions that were advanced and duly dealt with by both the Courts. In fact, on being pointedly asked, learned counsel for the plaintiff could not refer to anything on the record to show if the conclusion arrived at by both the Courts was either contrary to the record or suffered from any material illegality. No other argument was advanced.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

15.05.2018

Manoj Bhutani/Pkapoor

Whether speaking/reasoned
Whether reportable

(ARUN PALLI)
JUDGE

Yes/No
Yes/No