

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

R.S.A No.623 of 2016 (O&M)

Date of decision :13.07.2018

Major Singh

..... Appellant

Versus

Rattan Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Munish Gupta, Advocate
for the appellant.

LISA GILL,J.(Oral).

The appellant is aggrieved of judgment and decree dated 23.01.2013, passed by learned Civil Judge (Jr. Division), Hoshiarpur, whereby suit filed by the appellant's father and predecessor-in-interest- Swaran Singh, seeking permanent injunction restraining the defendant-respondents from creating any obstruction in discharge of water towards the area as mentioned in the suit, was dismissed. Appeal filed by the legal representatives of Swaran Singh i.e. Major Singh (present appellant) and Amrik Singh, was also dismissed by the learned Additional District Judge, Hoshiarpur, vide judgment and decree dated 04.09.2015. Both the said judgments and decrees dated 23.01.2013 and 04.09.2015, have been impugned in this appeal.

Brief facts necessary for the adjudication of the case are that

Swaran Singh, father of the present appellant filed a suit for permanent injunction for restraining defendant-respondent-Rattan Singh from creating any obstruction in discharge of water towards the area as described in the suit. Plaintiff pleaded that the property in dispute was Shamlat land and the said area was a 'Tobha'. Flow of water of all the residential houses was towards this plot since time immemorial. It was further pleaded that there was no other place around the houses shown in the site plan Ex.P-1, where the said water from the residential houses would flow. Property of the defendant-respondent-Rattan Singh was on the eastern side of the plot and he being the Lambardar of the village was taking undue advantage of his status and wanted to encroach upon the property. It was averred that in case, defendant-Rattan Singh succeeds in occupying the same, then irreparable loss and difficulties would be faced not only by the plaintiff but other villagers as well. An effort was also being made to fill up the 'Tobha' with earth by the defendants. Hence the present suit.

Defendant-Rattan Singh contested the suit while submitting that his father-Kartar Singh, had migrated from Pakistan. House and land in lieu of the land left by him in Pakistan was allotted in Khasra No. 68/1, 68/2, 68/3. Defendant inherited the said property from his father and was in peaceful possession of the suit land. It was further pleaded that there was no 'Tobha' on the suit land, but the same was agricultural land. Domestic discharge from the residential houses of the village was made through the *pucca*/permanent drain constructed by the Gram Panchayat of the village. Discharge from the plaintiff's house was also through the said

drain constructed by the Gram Panchayat. It was specifically denied that there was any effort by the defendant to encroach upon the said land.

Replication was filed. From the pleading of the parties, following issues were framed by the learned trial Court vide order dated 28.11.2008:-

1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether the site plan of plaintiff is incorrect?OPD
5. Whether the plaintiff has no cause of action for filing the present suit?OPD
6. Relief.

Both the parties led evidence.

Learned trial Court after considering the evidence on record concluded that the plaintiff had failed to prove that the land in question was a 'Tobha'. Issue no.1 was decided against the plaintiffs. Issue Nos. 2 to 5 were not pressed. No revenue/documentary record was produced by the plaintiff to prove his case and the suit of the plaintiff was dismissed by the learned trial Court vide impugned judgment and decree dated 23.01.2013. It is relevant to note at this point that plaintiff-Swaran Singh died during the pendency of the suit and he was represented by his four sons including the present appellant-Major Singh.

Aggrieved therefrom, two of the legal representatives of Swaran Singh, namely present appellant-Major Singh and one Amrik Singh, preferred an appeal. Learned Additional District Judge, Hoshiarpur, dismissed the said appeal vide judgment and decree dated 04.09.2015. Aggrieved therefrom, the present appellant-Major Singh

alone has preferred this appeal.

Learned counsel for the appellant contends that both the learned Courts below have erred in dismissing the suit filed by the plaintiff. While referring to the statement of DW-2-Charanjit Singh, it is urged that this witness has admitted that there is a septic tank of Kehar Singh in the plot in question. Therefore, it is proved that the plot in question was being used for discharge of residential/domestic waste. It is further contended that DW-3-Rattan Singh, has given a contradictory statement regarding the property in question. It is thus prayed that both the impugned judgments and decrees dated 23.01.2013 and 04.09.2015, passed by the learned Civil Judge (Jr. Division) and learned Additional District Judge, Hoshiarpur, be set aside and the suit filed by the appellant-plaintiff be decreed.

I have heard learned counsel for the appellant and have perused the file as well as the record, which is furnished by the learned counsel in Court today.

Swaran Singh-predecessor-in-interest and father of the present appellant-Major Singh filed the suit for permanent injunction seeking to restrain respondent-defendant-Rattan Singh from creating any kind of obstruction in the discharge of water towards the area as mentioned in the suit and also for restraining the said defendant from encroaching upon the property as detailed in the plaint. It is not in dispute that in order to prove his case, the plaintiff did not lead any documentary evidence to show that the property in question was Shamlat land and a 'Tobha'. Reliance was sought to be placed on the site plan Ex.P-1 which

has admittedly not been prepared with reference to any record maintained by the department. Reference to photocopy of '*shajra kisat bar*' (Mark-A) pertaining to the year 1850, is not relevant. Apart from the fact that the said document has not been proved in accordance with law, it is matter of record that PW-1-Swaran Singh has admitted that he is not aware regarding consolidation of land which may have taken place after 1850.

Swaran Singh, appeared before the learned trial Court as PW-1. He admitted that the property in dispute is not a 'Tobha', but is in-fact in the shape of a 'Tobha'. PW-1 further admitted that as per record available with the office of the Deputy Commissioner, the said property is not reflected as 'Tobha'. There is nothing on record which would reflect that water/waste water/sewage is discharged in the area as mentioned. It is merely the bald statement of the plaintiff-Swaran Singh, which is available on record in this respect. Argument raised on behalf of the appellant is that once DW-1 has admitted the construction/presence of a septic tank on the land in dispute by his brother-Kehar Singh, it amounts to acceptance of the averments that the area in question is used for collection of the waste discharge from the residential houses. Such an interpretation is clearly unwarranted, the same in-fact proves that the plaintiff-Swaran Singh was never in possession of the property in question. Therefore, there is no question of any encroachment over the property by the defendant.

It has been rightly held by both the learned Courts below that the plaintiff failed to prove that he was in possession of the land or that the land in question was Shamlat land in the shape of a 'Tobha' or that

any obstruction was being caused by the defendant in the natural flow of water.

Impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record. 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.

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 23.01.2013 and 04.09.2015 passed by the learned Civil Judge (Jr. Division) Hoshiarpur and learned Additional District Judge, Hoshiarpur, respectively, which warrant any interference by this Court.

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

July 13, 2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No