

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

**R.S.A No.654 of 2016(O&M)
Date of decision :18.09.2018**

Jai Dayal (deceased) through legal representatives

..... Appellant

Versus

Bishan through legal representatives and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Abhinav Sood, Advocate
for the appellant.

LISA GILL,J

Appellant is aggrieved of judgement and decree dated 27.05.2015 passed by the learned District Judge, Sonipat, to the extent it is directed that the official respondents i.e. respondents no.3 to 5, shall repair the metalled road existing on Rasta No. 314 while not making any encroachment upon plot nos. 699, 700 and 701. Appellant-Jai Dayal was arrayed as defendant no.4 through his legal representatives by the plaintiff-respondents no.1-Bishan, No.2-Randhir in the suit filed by the respondent-plaintiffs.

Brief facts necessary for the adjudication of the case are that respondent-plaintiffs-Bishan and Randhir filed a suit for permanent injunction for restraining defendant-respondents no. 3 to 5 (defendants no.1 to 3 in the plaint) from constructing any metalled road through plot

nos. 699, 700 and 701 as detailed in the plaint as well as the site plan attached therewith. It was pleaded that plaintiffs were the owner in possession of the abovesaid three plots comprising 7 Marlas each i.e. 219 sq. yards each within the revenue estate of village Jakholi. Said plots were stated to be purchased from Roop Chand son of Mam Chand, Bimla wife of Sham son of Sarup and Shakuntala wife of Dharambir son of Sarup Singh, vide agreement to sell dated 17.05.2006. The entire sale consideration of the said plots was paid to the vendors regarding which the receipts were executed by them on the same day in presence of the witnesses. Possession of all the three plots was delivered to the plaintiffs on 17.05.2006 itself. It was agreed that the sale deed of the abvoesaid plots would be executed in favour of the plaintiffs on any convenient date. The plaintiff-respondents pleaded that there is a passage/rasta bearing no. 314 towards the southern side of the three plots which was encroached upon by the present appellant-Jai Dayal (through his legal heirs) as well as defendants no. 5, 6 and 7 (respondents no.6 to 8 in this appeal). In this regard an application under section 7 of the Punjab Village Common Lands Act was filed by the plaintiffs against the present appellant, which was pending before the S.D.M./Collector, Sonipat. Demarcation of Plot No. 314 was conducted on 28.02.2007. It is reflected in the demarcation report that the appellant and the abovesaid defendants no. 5 to 7 had illegally encroached upon the passage no. 314. It was further stated that defendants no.4 to 7 in collusion with the official defendants were threatening to construct a metalled road through the plots of the plaintiffs in a forcible and illegal manner. Hence the suit was

filed.

Defendants no. 1 to 3 i.e. respondents no. 3 to 5 filed a joint written statement and resisted the suit. It was pleaded that as per *Aksh Shajra*, a metalled road already existed on passage no. 314 for the last 20 years. The said road was in a dilapidated condition and required repair. The road abuts the plots of the plaintiffs and the official respondents were only going to repair the said road. There was no question of any encroachment upon the plots detailed in the plaint. It was further averred that agreement dated 17.05.2006 is a result of collusion between the plaintiffs with the owners Mam Chand etc. and defendants no. 4 to 8. Proceedings under Section 7 of the Punjab Village Common Lands Act, was filed by the plaintiffs as a result of collusion with defendants no. 4 to 8. Demarcation of the plots was conducted in the absence of the official respondents. No notice was served by the local commissioner. Therefore, the report was not binding on the official respondents. Dismissal of the suit was prayed for.

Separate written statement was filed by the present appellant-defendant no.4. Various preliminary objections were raised. Averments on merit were controverted while specifically denying that there was any encroachment by him upon any area of the passage. Validity of the demarcation report was denied.

Defendant no.8-Gram Panchayat (respondent no.9 in this appeal) resisted the suit while taking a stand that the appellant and defendants no.5 to 7 had all encroached upon the passage no.314 which was carved out during the consolidation. Ejectment proceedings were

pending against them before the Court of the learned Assistant Collector Ist Grade, Sonipat. Dismissal of the suit was prayed for.

Defendants no. 5 to 7 (respondents no. 6 to 8 in this appeal) were proceeded against *ex parte*.

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

1. Whether the plaintiffs are entitled for a decree of injunction as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiffs has no cause of action to file the present suit?OPD
4. Whether the suit is bad for mis-joinder of necessary parties?OPD.
5. Relief.

The contesting parties led evidence in support of their respective claims.

Learned trial Court concluded that the plaintiffs failed to prove their ownership or possession over the plots in question. Therefore, the suit was dismissed.

Plaintiff-respondents no.1 and 2 preferred an appeal, which was disposed of by the learned District Judge, Sonipat, vide judgement and decree dated 27.05.2015. It was concluded that no encroachment was being made by the official respondents on plot nos. 699, 700 and 701. Passage already existed on Rasta no. 314, therefore, the official respondents would be entitled to repair the metalled road which existed in the records and no encroachment would be carried out over the plot nos. 699, 700 and 701.

Aggrieved therefrom, the present appeal has been filed by

the appellant, arrayed as defendant no.4 before the learned trial Court.

Learned counsel for the appellant vehemently argues that the learned District Judge, Sonipat, has grossly erred in disposing of the appeal with the observation that the official defendants are entitled to repair the metalled road existing on Rasta No. 314. It is submitted that the plaintiffs have failed to establish their possession over the Plot No. 699, 700 and 701 by leading clear and cogent evidence. Learned counsel for the appellant argues that in this situation there was no occasion for returning a finding that there is no encroachment or otherwise by the official respondents on plot nos. 699, 700 and 701. It is urged that the learned District Judge, Sonipat, has disposed of the appeal as if there was a counter claim of defendants no.1 to 3 to repair or construct the metalled road allegedly existing on passage no.314. Therefore, the said directions are not justified. It is thus prayed that this appeal be allowed and judgement and decree dated 27.05.2015 passed by the learned District Judge, Sonipat, be set aside, to the extent of the directions as mentioned above.

I have heard learned counsel for the appellant and have gone through the file as well as the photostat copies of the record furnished in Court today, with his able assistance.

Learned counsel for the appellant is unable to dispute that even as per the written statement filed on behalf of the present appellant, it is admitted that there is indeed a passage/rasta no. 314 in village Jakholi. It is mentioned in the written statement that the plaintiffs have failed to give a proper location or direction in regard to their alleged

plots. It is further stated in para no.3 of the written statement that even if there is indeed a demarcation report, the same is illegal, incorrect and not binding on the rights of the appellant. Ex.P-7, *Aksh Shajra* on record reveals the existence of the passage. Demarcation of the area was conducted by the Tehsildar, Sonipat on 28.02.2007 in compliance of the orders of S.D.M., Sonipat. It clearly emerges from the record that the metalled road existed on Rasta No. 314 since the last 20 years. It is the specific stand of DW-1-J.C.Sharma, Junior Engineer, S.D.E, that the said metalled road is in a dilapidated condition and requires repair. The said road abuts the plots no. 699, 700 and 701. Official respondents averred that they would only carry out the repairs of the road at its existing site. There is no question of any encroachment thereon. It is relevant to note that the findings of the learned trial Court that the plaintiffs i.e. respondents no.1 and 2 in this appeal are not entitled to the injunction as prayed for as they failed to prove their ownership/lawful possession has not been disturbed by the learned District Judge, Sonipat.

In the factual matrix of the case, there is no infirmity in the direction issued by the learned District Judge, Sonipat, to the extent that the official defendants-respondents are entitled to carry out repairs of the metalled road which admittedly exists on Rasta no. 314 without making any encroachment. The suit filed by Bishan and Randhir stands dismissed. There is no question of law, much less a substantial question of law which is involved in this appeal for consideration of this Court.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed

above, the impugned judgment and decree dated 27.05.2015 passed by the learned District Judge, Sonipat, is upheld.

There is a delay of sixty six (66) days in filing of this appeal. As the appeal 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.

18.09.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No