

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.5934 of 2014 (O&M)

Date of Decision:14.12.2018

Gurnam Singh and another

...Appellant(s)

Versus

Gurdial Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.A.S.Syan, Advocate for the appellants.
Mr.M.K.Singla, Advocate for the respondents.

ANIL KSHETARPAL, J.

The defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court, which is sought to be encroached upon by the defendants-appellants.

The learned first appellate court, on reappreciation of evidence, recorded observations in paras 16 to 20 of its judgment, which are extracted as under:-

16. The appellants/plaintiffs had filed the suit for declaration to the effect that site shown as ABCDA in the site plan enclosed with the plaint was a public passage and nobody had any right, title or concern to encroach upon the same. In order to prove identity of suit property, plaintiffs examined Chanan Singh, Draftsman as PW2 who proved the site plan as Ex.P1. However, while exhibiting the site plan, site plan enclosed with the plaint wherein site had been depicted as ABCDA could not be exhibited and another site plan prepared by the same draftsman was exhibited as Ex.P1 in its place. Perusal of both the site plans shows that there is absolutely no difference between these two site plans and both the site plans had been prepared by draftsman Chanan Singh. It also seems

that both the site plans had been prepared at the same time. Furthermore, site plan wherein suit land had been marked as ABCDA was enclosed with the plaint and as such, it was part of the pleadings raised by appellants/plaintiffs. In these circumstances, learned trial court was not justified in observing that as appellants/plaintiffs had not exhibited the site plan enclosed with the plaint, they had failed to prove identity of the suit property.

17. *It would also not be out of place to mention here that even respondents/defendants had not disputed the identity of the suit property as they had not stated that site plan appended with the plaint was not correct. Rather it had been claimed by them that there was no passage at the spot as alleged by appellants/plaintiffs and in fact site in question was owned and possessed by them and appellants/plaintiffs wanted to encroach upon the same. Furthermore earlier defendant Gurnam Singh had filed a suit against appellants/plaintiffs and one Surjit Singh wherein he had produced a site plan. Said site plan had been duly exhibited by appellant/plaintiffs as Ex.P15 on record. Defendants had also shown site in dispute as a phirni of the village in site plan Ex.P15 which means a public street. Site plan now produced by appellants/plaintiffs is similar to the site plan produced by respondents/defendants in the earlier suit. Even defendants can not dispute the correctness of site plan Ex.P15.*

18. *While entering into the witness box, DW2 Malkiat Singh had stated in his cross examination that he had seen the site plan and the houses shown in the same were those of his village. Thus even he had not disputed the identity of site property. It had also been wrongly observed by the learned trial court that that as per statements of PW1, PW2 and DW1, houses of plaintiffs were situated beyond red line and as such kacha passage in dispute was also beyond red line whereas it had been claimed by appellants/plaintiffs that site in dispute was within red line. It seems that while returning these*

findings, learned trial court had confused house of Rajinder Kumar as shown in the site plan Ex.P1 to be that of plaintiff Rajinder Singh's house. Due to this mis-understanding, it had been observed by learned trial court that as the houses of all the plaintiffs were beyond red line, site in dispute could also not be within the red line. Learned trial court had even ignored the fact that PW3 Gurmail Singh, Sarpanch had stated while entering into the witness box that passage in question was within red line and in fact it constitutes red line of the village and house of plaintiff Chatwant Singh is outside the red line. In view of my findings above, it cannot be said that appellants/plaintiffs had failed to prove identity of the suit property and their suit had been wrongly dismissed only on this ground.

20. *Now the next question to be determined here is whether the passage in question i.e. suit site is a public passage or not. In order to prove this fact, plaintiff Gurdial Singh himself stepped into the witness box as PW1 and deposed on the lines of plaint filed by him. The appellants/plaintiffs also examined Gurmail Singh, Sarpanch of the village as PW3 who also deposed on the lines of their pleadings and categorically stated that site plan was that of the passage in question which falls within the red line of the village and a public passage. The appellants/plaintiffs had also placed on record resolution passed by the Gram Panchayat as Mark -X wherein it had been categorically mentioned that the suit site was a public passage and nobody had a right to use the same as the same had not been allotted to any person. It had been further stated in the resolution that in case anybody throws rurri or garbage in the passage, he would be liable for punishment as per rules.*

21. *On the other hand, respondents/defendants had failed to rebut the evidence adduced by the appellants/plaintiffs. Simply saying that suit site was not a public passage and was owned and possessed by the defendants, was not sufficient to help their case. Respondents/defendants had failed to show as to*

how they came in possession of the suit site. Earlier, defendant Gurnam Singh had filed a suit regarding the suit site against present appellants/plaintiffs and one Surjit Singh. Said suit was withdrawn by him by making a statement that he did not want to proceed with the same as there was no apprehension to his possession. Said suit was filed on 10.4.1999 and was withdrawn on 25.4.2003 i.e. same remained pending for above four years as is apparent from documents Ex.P9 to Ex.P15. Admittedly, no interim stay was granted in favour of respondent/defendant Gurnam Singh in the said suit. Rather appeal filed by him against interim order was dismissed by the court of Shri B.S.Mangat, learned Additional District Judge, Patiala, vide judgment dated 14.8.2000 Ex.P11 on record. In these circumstances, it seems that respondent/defendant Gurnam Singh had no evidence to show that he was in possession of the suit site and as to how he came into possession of the same. It is pertinent to mention here that in the said suit, defendant Gurnam Singh had appended a site plan which is Ex.P15 on record. Even in the said site plan, site in dispute had been shown as Puraani Phirni of the village leading to Chappar which means that suit site is a public passage as claimed by appellants/plaintiffs.

This Court has heard the learned counsel for the parties at length and with their able assistance have gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants although made sincere attempt, however, could not point out any substantive error in the judgment of the learned first appellate court. Further, he could not create a dent in the finding of the learned first appellate court particularly when Ex.P15, a layout plan, filed by defendant-appellant Gurnam Singh in the previous suit, had itself described the property in dispute to be an Old Circular Road of the village leading to the pond. Once the defendant-appellant Gurnam

Singh has depicted the property in dispute to be a public passage, there is no ground to interfere.

In view of the above, Regular Second Appeal is dismissed.
Pending application(s), if any, shall also stand disposed of, in terms thereof.

14.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No