

103.

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

RSA-3782-2017 (O&M)

Date of decision: 25.04.2018.

BALWAN SINGH

... Appellant

Versus

BRAHMA AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sandeep K. Sharma, Advocate,
for the appellant.

HARI PAL VERMA, J.

Appellant (hereinafter called as 'plaintiff') has filed the present Regular Second Appeal against the judgment and decree dated 11.05.2017 passed by learned Additional District Judge, Rohtak, whereby his appeal against the judgment and decree dated 28.02.2017 passed by learned Civil Judge (Junior Division), Rohtak, was dismissed.

Briefly stated, the plaintiff has filed a suit for permanent injunction, claiming himself to be owner in possession of the house constructed by his forefathers. The door of the said house opens in a street which vests in Gram Panchayat, Dhamar. As per the plaint, there exists a street towards the eastern side of the house of the plaintiff which is 6 feet wide. The plaintiff has opened his door in the street and the same is being used by him to access his house, but defendant No.1-Brahma without any right intends to block the street after making unauthorized construction. The street in question is a public street and vests in the Gram Panchayat and the same has been brick-paved by the Gram Panchayat. Despite repeated

illegal act, plaintiff had no option, except to file a suit for permanent injunction.

The suit was defended by the defendants. The defendant No.1, while filing written statement, had taken various preliminary objections questioning the maintainability, jurisdiction, locus standi, cause of action and resisted the suit on the ground that the plaintiff is neither owner of the house nor there exists any such street. In fact the alleged street is a part of defendant's property and does not vest in Gram Panchayat as claimed by the plaintiff. Whereas defendant No.2-Gram Panchayat also filed written statement and resisted the suit on the ground that the suit property is a plot of defendant No.1, who is owner in possession of the same and the Gram Panchayat has no concern with the street. Gram Panchayat never brick-paved the alleged street. In this manner, the Gram Panchayat has supported the version of defendant No.1.

The crucial question which was required to be determined by the Civil Court was, as to whether or not the street in question is a public street and the plaintiff has a right to seek injunction against the defendants? In order to prove the fact that the street in question is a public street, the plaintiff examined PW3-Kartar Singh, Ex-Sarpanch of the Village, who stated that during his tenure, he got the street in question brick-paved with the panchayat expenses. PW2-Krishan Dutt also stated that it is a public street as he has opened his window in the street. Plaintiff had also stated that he has opened his door towards eastern side in the street in question, but the Panchayat has denied the street to be a public street and the same was ever brick-paved by utilizing the panchayat fund. But at the same time,

personal property. Therefore, in order to get a decree of injunction, the plaintiff was required to prove that it is a public street, though the defendants have denied it as a public street and rather have stated that it is a private passage left by the defendant.

Though the plaintiff has pleaded that the disputed *gali* is the only street for ingress and outgress from his house, whereas in his evidence, he admitted that he is having a street towards the western side of his house also but surprisingly, he did not show the same in his site plan Ex.P-3. He further admitted that the site plan was not prepared as per the spot inspection. Meaning thereby, a public street is in existence towards western side of the house of the plaintiff, but the said fact was concealed by the plaintiff. The plaintiff had further asserted that the Gram Panchayat is owner of the disputed *gali*, whereas defendant No.1 had asserted that there no *gali* in existence towards eastern side of the house of the plaintiff and the space in existence was left by him from his own land for his own use. In this manner, the Gram Panchayat had denied the existence of the disputed *gali* towards the eastern side of the house of the plaintiff and its ownership. Accordingly, vide judgment and decree dated 28.02.2017, the trial Court dismissed the suit.

Aggrieved against the aforesaid judgment and decree dated 28.02.2017, the plaintiff filed an appeal before the Lower Appellate Court. However, the same was also dismissed by the Lower Appellate Court vide judgment and decree dated 11.05.2017.

It is in the aforesaid circumstances, the plaintiff has filed the present Regular Second Appeal impugning the judgments and decrees passed by the courts below.

Learned counsel for the appellant has argued that the existence of public street is established and it is not relevant as to whether the street is left by the Gram Panchayat or by the defendant No.1. Defendant No.1 has failed to prove that the disputed portion of the *gali* is his personal property. He refers to the statement of DW3-Kuldeep Singh, Ex-member Panchayat wherein he has stated that the door of the house of the plaintiff opens towards the street. The finding of the courts below on issue No.1 is totally perverse in law and facts of the case. In fact the findings, so recorded by the courts below regarding the existence of the passage/*gali* in dispute is the result of misreading of evidence available on record. The courts below have not appreciated the material fact that the defendant-respondent No.1 claims that he is owner in possession of the disputed passage/*gali*. Therefore, it was incumbent upon defendant No.1 to prove on record by leading material evidence that the said passage or *gali* is owned by him, but no such evidence has been made available on record. The findings recorded by the Lower Appellate Court that the jurisdiction of civil court is barred and the plaintiff has an efficacious remedy in the shape of filing a suit for eviction under Section 7 of Village Common Land Act are totally wrong and perverse. When a person is intending to do some illegal act which infringes the rights of the other party, then irrespective of the nature of the land/street, learned Civil Court has the jurisdiction to entertain and adjudicate the matter regarding grant of injunction. Therefore in the given facts and circumstances, the plaintiff was entitled to have a decree of permanent injunction against the defendant.

I have heard learned counsel for the appellant and perused the

The argument raised by learned counsel for the appellant that DW3-Kuldeep Singh, who is Ex-Member of Panchayat and has stated that the door of house of the plaintiff opens towards the disputed land, cannot be accepted, as in continuity of his statement, he has further stated that the door of the house of the plaintiff opens in both the sides and he uses both side ways and most of the time, he uses the *rasta* which is in the main street. Most of the time, he uses the other way. This witness has even denied that during the tenure when Kartar Singh son of Surat Singh was the Sarpanch, the Panchayat ever constructed *gali* in between the houses of the plaintiff and defendant No.1. Even otherwise, the plaintiff was required to prove his case by leading affirmative evidence, but in the case in hand, the plaintiff has failed to prove on record that he is owner of disputed *gali* in any manner. He has not led cogent and convincing evidence and, therefore, he cannot take any benefit of the statement of defendant.

Once the plaintiff has failed to prove his right to use the disputed *gali*, he cannot be allowed to take the benefit of the fact that the defendant has not proved his ownership over the portion of the disputed *gali*. It is a pleaded case of the plaintiff that the disputed *gali* is owned by the Gram Panchayat, in fact, he claims that this land belongs to Gram Panchayat. There is a complete mechanism provided under the Village Common Land Act, which, the plaintiff could have availed under law.

No substantial question of law arises in the present Regular Second Appeal.

No other argument is raised.

Since there are concurrent findings of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

25.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No