

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.419 of 2018 (O&M)

Date of Decision: January 22, 2018

Bhagwan Singh

...Appellant

Versus

Gram Panchayat and Gram Sabha of Village Dhakansu Majra & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.G.S.Benipal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings, whereby the suit claiming the following relief has been dismissed by both the Courts below:-

“Suit u/s 38 of the Specific Relief Act, for the relief of Permanent Injunction restraining the defendants, their agents, servants, representatives, associated and their attornies from raising the construction of Nalla in the Kacha Passage/Conc. Street, which is touching to the land of the plaintiff marked with the letters ABCD with red colour in the site plan attached with the plaint, towards the Southern side of the land of the plaintiff, bearing Khasra Nos.29/2/3 (5-3½) and 126/1 (0-2), total land measuring 5 bighas 5½ biswas marked with yellow colour in the site plan situated in the revenue estate of village Dhakansu Majra, Tehsil Rajpura, District Patiala.”

Mr.Kanwaljit Singh, learned Senior Counsel assisted by

Mr.G.S.Benipal, representing the appellant-plaintiff submitted that a

simpliciter suit for injunction claiming the aforementioned relief was filed on the premise that the plaintiff is the landowner and Khewatdar of Village Dhakansu Majra, Tehsil Rajpura, District Patiala, whereas defendant No.2 is the Sarpanch of the Village. At the time of election of the Panchayat, appellant-plaintiff did not support defendant No.2 and, therefore, he became inimical towards him and had been nursing grudge. The land of the plaintiff is much deep than the existing drain/Nala, i.e., 2'-6" in height and 38 Karams in length. The said kacha passage and the concrete street is 14'-3" wide and 2' higher than the land of the plaintiff, which had been shown in red colour in the site plan and the drain/Nala in green colour. There is a passage of 3 karams marked with letters "CDEFG" in the site plan. The land of Sadhu Singh, Raj Kumar, Rajesh Kumar, Dev Raj, Joginder Singh, Hardeep Singh and Shamsher Singh is situated towards the said kacha passage and towards southern side, there is a small bridge (Pully) being used by the plaintiff. He had been using the said bridge to reach his land, but the defendants in connivance with the aforementioned persons without any legal right threatened to raise construction of Nala in the side of bridge/path touching the land of the plaintiff. In support of the aforementioned pleadings, the appellant-plaintiff proved and produced on record, copy of adhar card (Mark P1), site plan (Ex.P1) and jamabandi for the year 2013-14 (Ex.P2) through the testimony of the witnesses.

The defendants contested the suit by filing written statement stating therein that there is a kacha passage, which is about 15' in length and this passage is owned and possessed by the Gram Panchayat of the village and the same is being used by the villagers as usual since long. It was averred that the plaintiff is interested to encroach the property of Gram

Panchayat. The trial Court and the Lower Appellate Court erroneously and perversely dismissed the suit on the premise that the plaintiff has miserably failed to prove the case as set out in the plaint.

It was next argued that both the Courts committed illegality in not appreciating the law of justice, equity and fair-play, whereas simpliciter injunction was sought as the evidence brought on record made out a case of granting of injunction. In fact, it was proved on record that the defendants intended to construct illegal drain on the southern side of the land of the plaintiff. The Courts below have misread the oral statements of four witnesses produced by the plaintiff, who in unison stated that the proposal to make drain/Nala from point "C" to point "D" was not in the interest of the village, but intentionally being done to cause loss to the plaintiff. In this backdrop of the matter, the injunction was sought.

It was next submitted that defendant No.2 had been nursing grudge against the plaintiff as he did not support him in the elections. The role of the Gram Panchayat is for the betterment of the villagers but not to indulge in causing damage or loss to the property of opposite group.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of the learned Senior Counsel for the appellant-plaintiff.

On the contrary, it is evident that the defendants have proved on record the demarcation report and a categorical statement was made by defendant No.1 that it was the plaintiff who wanted to encroach upon the land of the Gram Panchayat in the kacha passage, whereas he had no right or title to interfere in the development work carried out by the Gram Panchayat in raising the construction of the drain. The demarcation report

Ex.D1 has been proved on record and Utilisation Certificate Mark-A has also been brought on record. Despite the extensive cross-examination, the plaintiff had not been able to unearth any malafide or intentional act at the behest of defendant No.2 in causing obstruction in the alleged passage, whereas on the contrary, it has been proved that the appellant-plaintiff wanted to encroach upon the land of the Gram Panchayat.

The evidence brought on record irresistibly revealed that construction of drain had already been completed at the spot, which fact was not disputed by the plaintiff as is noticed by the Lower Appellate Court in Para 14 of the impugned judgment. The drain had been constructed on the land belonged to the Gram Panchayat. Plaintiff could not explain as to how raising of the construction would seriously affect the land of the plaintiff, whereas in fact it was for the welfare and development of the village.

The aforementioned arguments of the learned Senior counsel for the appellant-plaintiff, in my view, are not able to cut ice to form a different view than the one arrived at.

For the reasons aforementioned, no ground for interference in the concurrent findings of the Courts below is made out. No substantial question of law arises for determination by this Court. Accordingly, the appeal is dismissed.

January 22, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No