

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

Regular Second Appeal No. 858 of 2017(O&M)

Date of Decision: September 24 , 2018.

Roop Lal APPELLANT (s)

Versus

Raj Kumari and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The plaintiff-appellant is aggrieved of judgment and decree dated 18.12.2015 passed by the learned Civil Judge(Senior Division), Pathankot as well as judgment and decree dated 16.11.2016 passed by the learned District Judge, Pathankot whereby the suit filed by him has been dismissed and the counter-claim filed by the defendants/respondents was allowed.

Brief facts necessary for the adjudication of this case are that, the plaintiff-appellant filed a suit for permanent injunction seeking to restrain the defendants/respondents or their agents, assignees and representatives from

interfering, encroaching upon and carving out any passage through the property/house of the plaintiff/appellant as detailed in the plaint. Plaintiff pleaded that he is the owner of the house as detailed in the plaint and as per the site-plan attached, he was in possession of the portion marked ABXY. House in question had been constructed since long. For extending his house, the appellant purchased land measuring 10 marlas marked XYBC vide sale-deed dated 27.08.1991 from Nitaya Nand and Parshotam Lal forming part of Khasra No.10R/27(min) out of the total land measuring 3 kanals 1 marla. Thus, he was in possession of the property marked AXBCYD. The defendants however threatening to interfere and encroach upon the property belonging to the plaintiff/appellant, carved out a passage through his house. Appellant's thumb impressions, it was pleaded, were taken by the defendants/ respondents on blank papers in connivance with Sham Singh, vice Chairman, Block Samiti, Narot Jaimal Singh. Defendants were requested a number of times to admit the plaintiff's claim, but to no avail. Hence, the suit was filed.

Defendants/respondents contested the suit. Written statement was filed by them raising various preliminary objections. Averments on merits were controverted. It is specifically contended that the site-plan attached with the complainant is clearly incorrect. In the garb of the suit, the plaintiff wanted to grab the public passage which is the only means of passage or for egress and ingress to their house. The plaintiff allegedly wanted to merge the passage into his courtyard and for this purpose, he demolished the bricks pavers. The matter was reported to the police and the Gram Panchayat. A resolution was passed by the Gram Panchayat and the matter was reported to the DDPO. The Panchayat Officer

visited the spot and found that the plaintiff demolished the brick paved street and sought to encroach upon land more than the share purchased by the plaintiff.

Counter-claim for mandatory and permanent injunction was filed by the defendants/respondents while pleading that the street is located between the houses of Karam Chand and the plaintiff. Except the disputed passage, the defendants/respondents have no other way of egress and ingress to their house. The disputed passage was being used by the defendants for the last 22 years. The plaintiff had raised a wall at point AB during midnight on 10.02.2011 in an illegal manner. Reply to the counter-claim was filed by the plaintiff/appellant while submitting that defendant No.1-Raj Kumari purchased land measuring 5-1/2 marlas (80 ft. x 80 ft.) from the gate of Karam Chand upto the gate of the vendee and towards southern side upto the boundary of the house of the plaintiff and further with dimension of 16 ft. x 50 ft. on eastern side of vendee and western side of Karam Chand vide sale-deed dated 17.08.2010 from Dinesh Kumar for using the passage to her house. The plaintiff/appellant prayed for the suit to be decreed and dismissal of the counter-claim, whereas the defendants prayed for dismissal of the suit and decreeing of their counter-claim.

On the basis of pleading of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff has concealed the material facts? OPD
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether counter claimants are entitled to permanent injunction as prayed for? OPD
5. Whether counter claimants have concealed the material facts? OPP
6. Whether counter claim is not maintainable?
7. Relief.

After amendment of written statement and counter-claim, an additional issue was framed by the learned trial court on 21.03.2015 i.e.,

4A. Whether counter claimants are entitled to mandatory injunction as prayed for? OPD

Evidence was led by both the parties. The learned trial court on considering the evidence on record dismissed the suit filed by the plaintiff/appellant and allowed the counter-claim filed by the defendants/respondents. The appellant/plaintiff was directed to restore the disputed street ABIH shown in the site-plan (Ex.D14) to its original position after removing the obstruction at points AB and HI shown in red in the street ABIH within three months. The plaintiff/appellant was also restrained from carrying out any further obstruction in the said street detailed in the head note of the counter-claim, except in due course of law.

Appeal preferred by the appellant/plaintiff was also dismissed by the learned District Judge, Pathankot vide judgment and decree dated 16.11.2016. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant argues that the defendants/respondents in the counter-claim set-up by them projected that the disputed portion of land was a passage maintained by the Gram Panchayat. It is submitted that the appellant as well as the defendants/respondents purchased land from their respective owners, who were co-sharers. The land in question was not partitioned. PW1 Joginder Pal, special power of attorney holder of the appellant/plaintiff has specifically stated so. PW1 Joginder Pal clearly stated that the partition

proceedings between the parties are pending. It is thus contended that the defendants/respondents were unable to prove that the passage in dispute was in existence for the past 22 years or that the passage was maintained by the Gram Panchayat. No evidence was led to prove the same. It is thus prayed that this appeal be allowed and impugned judgments and decrees be set aside. Consequently, the suit filed by the plaintiff/appellant be decreed throughout.

I have heard learned counsel for the appellants and have also gone through the photocopy of the record, which has been furnished in Court today.

The plaintiff/appellant in this case did not step in the witness box. His power of attorney holder, Joginder Pal appeared as PW1. In his cross-examination, PW1 Joginder Pal admitted that the plaintiff/appellant who is his brother-in-law is hale and hearty. He was not advised bed rest by any doctor. There is no reason forthcoming as to why the plaintiff himself did not step in the witness box. PW1 Joginder Pal stated that when the plaintiff purchased 10 marlas of land, only the boundaries thereof were mentioned and the measurements do not find mention. PW1 has given the specific description of the boundaries of the land of the plaintiff. Existence of the passage has not been specifically denied. PW1 Joginder Pal stated that the passage runs from the road which is on the eastern side alongside the wall of Karam Chand's property, though sought to explain that the said passage runs along the inside of the wall mentioned above. PW1 Joginder Pal further admitted that there is only one passage from the house of the defendants Raj Kumari and Faqir Chand, which is on the eastern side. PW1 Joginder Pal admitted that the passage which runs alongside Karam Chand's house and goes to Faqir Chand's house is not reflected in the site-plan (Ex.P1).

This witness admitted photograph (Ex.D1) which shows the house of the defendant Faqir Chand. The passage as existing on the spot marked ABIH in the site-plan (Ex.D14) is duly proved on record. Sale-deed dated 17.08.2010 (Ex.D1), resolution of the Gram Panchayat dated 11.02.2011 (Ex.D2), report (Ex.D3) of the Social Education and Panchayat Officer, various letters (Ex.D4 to D8), report dated 18.06.2014 (Ex.D10) of the Social Education and Panchayat Officer, Narot Jaimal Singh, report dated 03.02.2011 (Ex.D11) of the Tehsildar, Pathankot submitted to the Deputy Commissioner, Gurdaspur, complaint (Ex.D12) submitted before the Senior Superintendent of Police, Gurdaspur, demarcation report (Ex.D13), site plan (Ex.D14), photographs (Ex.D15 to D17) and report (Ex.D18) of the Deputy Superintendent of Police received under the Right to Information Act, clearly reveal the existence of the passage shown as ABIH in the photograph (Ex.D1). A perusal of the file and the available record reveals that the plaintiff/appellant has indeed failed to prove his case on the basis of the evidence on record whereas the defendants/respondents have led cogent and clear evidence to prove that the passage in dispute was in existence and is the only means of egress and ingress to their residential house.

Both the learned courts below have rightly held that the plaintiff/appellant did not come to court with clean hands inasmuch as that he did not even disclose the passage in the site-plan presented by him, though PW1 Joginder Pal has admitted the said passage in the site-plan (Ex.D14) produced by the defendants/respondents. The plaintiff further chose not to step in the witness box to prove his case. I am of the considered opinion that there is no question of law much less a substantial question of law which arises for adjudication in this regular second appeal. Both the learned courts below have returned concurrent

findings of fact after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 18.12.2015 and 16.11.2016 passed by the learned Civil Judge (Senior Division), Pathankot and the learned District Judge, Pathankot, respectively, which warrant any interference by this Court.

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

September 24 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No