

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

RSA No. 859 of 2017 (O&M)

Date of decision : August 27, 2018

Palwinder Singh

.....Appellant

Versus

Bhupinder Singh and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. C.L. Sharma, Advocate
for the appellant.

LISA GILL, J.

The appellant-plaintiff is aggrieved of concurrent findings rendered by the learned Civil Judge (Junior Division), Jalandhar vide judgment and decree dated 31.03.2015 and learned Additional District Judge, Jalandhar vide judgment and decree dated 06.09.2016.

Suit for permanent injunction was filed by the appellant-plaintiff seeking to restrain the defendants from encroaching upon the suit land by way of passage etc. or diminishing its value or utility by digging or removing the earth therefrom. The appellant claimed to be the owner in possession of the property in question on the basis of the registered sale deed dated 19.07.2010. It was pleaded that respondent No. 3 – father of the plaintiff was earlier the owner in possession of the suit property being the co-sharer to the extent of his share. Six marlas of land was purchased vide sale deed dated 19.07.2010 by the appellant from his own father – respondent No. 3 with specific boundaries as detailed in the plaint. Mutation of the same was entered in the revenue records. It was further submitted that respondents/defendants No. 1 and 2 are neither co-sharers nor have any ownership or possessory rights but they wished to encroach upon the suit

property measuring six marlas purchased by the plaintiff by using it as a passage. They further sought to diminish its value and utility by digging thereon and removing its earth. Hence, the suit was filed.

Respondents-defendants No. 1 and 2 filed a joint written statement. While taking preliminary objections, averments made in the plaint were also controverted. It was stated that the appellant had not come to Court with clean hands. He was a co-sharer in the suit property. The suit was, in any case, bad for non-joinder of necessary parties as property was purchased by Sukhwinder Kaur i.e. wife of respondent No. 1 – Bhupinder Singh, who was not impleaded as a party to the suit. It was further submitted that the appellant intended to purchase the property at a throwaway price but respondent No. 1 purchased 21 marlas of land for a sum of ₹5,90,000/- from Joginder Singh and Satwinder Singh sons of Dalip Singh vide registered sale deed dated 02.08.2010. Passage of the property was duly provided and mentioned in the sale deed. The appellant, it was stated, wanted to obstruct the same and he had tried to conceal the true facts.

Replication thereto was filed with the averment that khasra No. 101/1 was comprised of land measuring 4 kanal 18 marlas i.e. 98 marlas. 49 marlas out of the said 98 marlas was owned and possessed by Ajit Singh son of Dyal Singh i.e. father of the appellant. Remaining 49 marlas were owned by Joginder Singh and Satwinder Singh sons of Dalip Singh. Joginder Singh and Satwinder Singh sold 28 marlas to Mohinder Singh and 21 marlas to the wife of respondent No. 1. It was alleged that possession of 10 marlas of land from khasra No. 101/1 were illegally and forcibly given to Karnail Singh. This land abutted six marlas owned and possessed by the appellant. Karnail Singh handed over the possession of the said 10 marlas to Balwinder Singh.

Joginder Singh and Satwinder Singh sold land in addition to what they have.

Existence of the passage was denied.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff has not come to the court with clean hands and has concealed and suppressed material facts from the court?OPD
4. Whether suit of the plaintiff is bad for non-joinder of necessary parties?OPD
5. Relief.

Evidence was led by both the parties to substantiate their respective case.

Learned trial Court dismissed the suit filed by the plaintiff – appellant. Appeal filed by the appellant was dismissed by the learned Additional District Judge, Jalandhar vide judgment dated 06.09.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellant. There is misreading of the evidence on record. Reference is made to the statement of DW1 - Bhupinder Singh to argue that DW1 has admitted that the street which leads to his property measuring about six marlas was purchased by the plaintiff – appellant. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 31.03.2015 passed by the learned Civil Judge (Junior Division), Jalandhar and judgment and decree dated 06.09.2016 passed by the learned Additional District

Judge, Jalandhar be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file.

It is relevant to note that PW1 in his testimony stated that the suit property was got demarcated but no such demarcation report is available on the file. As per jamabandi Ex.P1, a number of co-sharers are reflected in respect to land measuring 4 kanal and 18 marlas. Despite a specific stand that the land in question was partitioned, there is no evidence on record to substantiate the same. PW1 admitted that separate khasra numbers were not allotted to all the co-sharers as per the jamabandi. PW1 expressed ignorance about the boundaries of the suit property. It was conceded that a passage existed adjacent to the house of Daljit Singh, which is a corner house. PW2 Manjit Singh admitted the correctness of the site plan (Ex.PX) which shows the passage adjacent to the house of Daljit Singh and Ajit Singh on the western side. Existence of the passage is clearly mentioned in sale deed (Ex.P7) vide which Sukhwinder Kaur wife of Bhupinder Singh - respondent No. 1, purchased the property. There is not an iota of evidence on record to show that defendants No. 1 and 2 have encroached upon the property owned by the appellant or that its value has been diminished by them. It is relevant to note that DW1 clearly stated that he has been passing through the said passage for the last 40 years. Water pipes laid by them run underneath the said passage as well. It is further not in dispute that the entire property is still joint between all the co-sharers. Partition amongst them has not taken place. Neither is there anything on record to reflect exclusive possession of any of the co-sharers. In fact, both the learned courts below have returned a categorical finding of fact that the

appellant could not even prove that his father - Ajit Singh was in fact the owner of the property in question to the extent of six marlas in khasra No. 101/1.

In this view of the matter, both the learned courts below have rightly held that the relief claimed by the appellant cannot be granted to him as firstly the suit property cannot be ascertained. Moreover the land in question is joint property as the same has never been demarcated and partitioned.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal. Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 31.03.2015 passed by the learned Civil Judge (Junior Division), Jalandhar and judgment and decree dated 06.09.2016 passed by the learned Additional District Judge, Jalandhar which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 27, 2018
rts

(Lisa Gill)
Judge

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