

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

**RSA No.626 of 2018(O&M)
Date of decision:- 30.01.2018**

Sita Ram

...Appellant

Versus

Narender

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. C.R.Narwal, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

CM No. 1563-C of 2018 :

For the reasons mentioned in the application same is allowed and delay of 196 days in filing the present appeal is condoned.

Accordingly, the present application stands disposed of.

Main Case:

The present appeal has been filed by the appellant against the judgment dated 08.02.2017 passed by the Additional District Judge, Hisar and judgment dated 12.10.2015 passed by the trial Court, whereby the suit of the plaintiff has been dismissed by both the courts.

Consequently, appellant filed the present appeal.

Brief facts of the case are that forefather of the plaintiff constructed a house within the Lal Dora of village Gangwa, Tehsile and District, Hisar where they were residing. It was submitted that thereafter father of the plaintiff demolished old construction and raised a new house 65 years ago on it and now it is the plaintiff who is residing in it. Towards

the southern side of the house of the plaintiff there is house of Raja and Shanti wife of Bagru. According to the plaintiff there is exists a street 6ft. Wide between the hous of Raja and Shanti, which is fully described in the site plan attached with the plaint. These were the claims of the plaintiff that a patnala exists for discharge of rainy water, bathing and washing water of the house of the plaintiff for the past 65 years from the aforesaid 6 ft wide street. He further submitted that now the house of the Raja and shanti have been recently purchased by the defendant in July 2014 and afterdemolishing the old construction, defendant has started residing new construction. Defendant has included in house the portion of aforesaid 6 ft. Street. However, patnala of plaintiff is still existing at the spot for which potographs were stated to be attached. Rainy water of the house of the plaintiff fall over the roof of the defendant and having apprehensin in mind that the said patnala would be closed by defendant, the plaintiff filed a suit for mandatory injunction thereby directing the defendant to remove the illegal construction raised by him in the street, but he flatly refused to do so.

Upon notice, defendant filed written statement took various primary objections which were reflected in issues. Defendant denied the existence of any gali as alleged by the plaintiff. Rather, he set up the version that the area which is claimed as gali was exclusive ownership and possessory property of the defendant having been purchased by him for a valuable consideration. It was further replied that the plaintiff had also instituted proceedings under Section 133 Cr. P.C. In the court of SDM, Hisar stating it to be public property and now he is taking a contradictory stand stating it to be his priave property.

From the pleading of the parties, following issues were framed:

1. Whether the plaintiff is entitled for decree for mandatory injunction, as prayed for on the ground mentioned in the plaint?OPP.
2. Whether the suit is bad on account of mis joinder and non joinder of necessary parties?OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
4. Whether the plaintiff is estopped to file the present suit by his own act and conduct?OPD.
5. Whether the suit is not maintainable in the present form ?OPD.
6. Whether the suit is time barred?OPD.
7. Whether the civil court has got no jurisdiction to entertain and try the present suit?OPD
8. Whether the plaintiff has not come to the court with clean hands?
9. Relief.

On the basis of evidence produced by the plaintiff as well as defendant, both the lower courts dismissed the appeal of the plaintiff. Appeal against the said judgment also met the same fate.

Feeling dissatisfied with the findings of the lower courts, appellant filed the present appeal and relied upon a site plan Ex. P1 which is a writing regarding the existence of six feet wide '*gali*' from some members of Gram Panchayat, Gangwa. He also put reliance upon the map Ex. PW5/A on the file which prepared by his son.

After going through the impugned judgment, it is apparent that

plaintiff has not produced any documentary evidence which will show that there exist street just adjacent to the back of the house of the appellant. First evidence i.e. Ex.P1 which is writing of the punch, produced by the appellant but the same found authenticity because no proof has been found in this regard that whom signed on it. Secondly, Ex. PW5/A is map prepared by PW5 -Anurag son of the plaintiff and this map do not find legality because it has not referred to any of the official record or revenue record. Both the evidence Ex. P1 and Ex. PW5/A do not confer a little bit of inference regarding the existence of street as shown in PW5/A.

Whereas, at the same time, defendant has produced evidence i.e. Field book of village Gangwa Ex. DW1/A. In this field book the house of the plaintiff was shown at No.170 in the name of his father Pitrumal. This field book as well as Sketch map Ex. DW1/B was produced and proved by the official witness DW1 Pawan Kumar, Patwari and the same donot reflect any street where the house of the plaintiff shown at serial No. 170 is situated. Both the documentary evidence led by the defendant were an officail record prepared in the year 1994, at the time when there was no dispute between the parties.

A perusal of the judgment shows that defendant also produced agreement Ex. D1 which was executed between Somti Devi and others and defendant Narender Kumar etc., when said Somati and others sold their plot to the defendant in the year 2004 and the same was also admitted by the plaintiff in the plaint. The persual of the Ex. D1 contains one street on the southern side of the plot and no information regarding other street was mentioned in this agreement.

However, perusal of the orders shows that, both the lower courts

has rightly been dismissed the appeal of the plaintiff. In the present appeal against the said judgment also met the same fate as existence of the said street is not made out from the Ex. DW1/A- Field book prepared, Ex. DW1/B-Sketch map which are prepared by official witness DW1-Pawan Kumar, Patwari, and agreement of the year 2004 Ex. D1 executed between the parties. Ex.PW5/A, site plan which is prepared by the PW5-Anurag, son of the plaintiff which has already been discarded.

Hence, No illegality, much less perversity has been pointed out in the judgments of the lower courts below, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, appeal stands dismissed.

30.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned Yes

Whether reportable No