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

RSA-685-1987 (O&M)

Date of decision : 08.03.2019

Gian Singh and others

... Appellants

Versus

Jhandu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. Sushil Jain, Advocate
for the appellants.

Mr. Ajay Ghangas, Advocate
for LR's of respondent No.2.

Ms. Ekta Advocate
for respondent No.3.

AMIT RAWAL, J.

The appellants-plaintiffs are, in the regular second appeal, against the concurrent findings of fact, whereby the suit for permanent injunction against the defendants restraining them from creating any obstructions in the free usage of the passage shown in yellow colour in the site plan attached with the plaint, situated at front of the gate of the plaintiffs and further from digging foundations, erection of wall or any constructions thereon and with alternative prayer of mandatory injunction directing the defendants to remove such constructions and obstructions, has been dismissed by the trial Court and affirmed in appeal.

The plaintiffs claimed themselves to be owner in possession of

gair mumkin gait comprised of Khewat No.158, khata No.166, Khasra No.304 measuring 1 kanal 1 marla, situated in the revenue estate of Village Sihi, Tehsil Ballabgarh, District Faridabad. As per the site plan, the land marked by letters 'ABCD' shown in red colour was being used by the plaintiffs for tethering cattle and for placing dung cakes, bitora etc. On the South of the site plan, khasra No.305 was shown as passage/*rasta* share-am, which had been in exclusive and peaceful possession and enjoyment of the plaintiffs since long. It was alleged that Khasra No.305, there was a gair mumkin *rasta*. Defendant Nos.1 and 2 did not have any concern with khasra No.305 or 306 as the *rasta* could not be sold to any one. All the rights, title and interest of the Village Gram Panchayat Sihi vested or deemed to have vested in defendant No.3 i.e. Faridabad Complex Administration. The erstwhile Gram Panchayat Sihi had no legal right to transfer Khasra No.305, either by way of sale, gift or release, in any manner to any person and despite repeated requests, defendant Nos.1 and 2 were bent upon to create the obstructions in front of gait of the plaintiffs, shown in yellow colour, therefore, the suit, aforementioned, was filed.

The defendants opposed the suit by raising objection qua maintainability, possession, mis-joinder, *mala fide* etc. It was averred that the plaintiffs intentionally gave wrong boundaries of the gait and plot towards West of the gait of the plaintiffs and plot of the answering defendants as there was 20 fts, wide share-am, in abadi of Village Sihi after the house of Khazan and plot of Udhey Bhan, were situated. The land in the suit was sold in open auction and defendant No.1-Jhandu, was the highest bidder. The plaintiff and their predecessor-in-interest participated and gave higher bid, in respect of the property. The partial construction of the house

was denied, much less, existence of the passage. It was stated that the suit land, on 23.03.1967, was sold in public auction with due permission of the higher authorities,. Even, jurisdiction of the Civil Court was objected to.

Replication was filed.

Since the parties were at variance, the following issues were framed by the trial Court:-

- 1. Whether there is passage towards Sought of the gait of the plaintiff comprising of Khasra No.305? OPP*
- 2. Whether the land in suit of the plaintiff has been transferred legally in favour of defendant No.1 as alleged? OPD*
- 3. Whether defendant No.2 is owner in possession of the suit property by virtue of sale deed dated 25-7-77? OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the present suit is not maintainability in the present form? OPD*
- 6. Whether the suit is bad for mis-joinder of necessary parties? OPD*
- 7. Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct? OPD*
- 8. Whether the suit is not within time? OPD*
- 9. Whether the suit is bad for mis-description of property? OPD*
- 10 Whether the Civil Court has no jurisdiction to try the present suit? OPPD*
- 11. Whether the defendants are entitled to special costs ups*

354 CPC ? OPD

12 Relief.

Both the parties led evidence in support of their respective cases.

Mr. Ashwani Kumar Chopra, learned Senior Counsel assisted by Mr. Sushil Jain, learned counsel appearing on behalf of the appellants-plaintiffs submitted that it was Khasra No.305, having area 1 kanal 10 maralas was put to auction, evident from Ex.P1 to Ex.P3 i.e. auction proceedings, resolution of the Gram Panchayat. Participation of the plaintiffs, in auction proceedings, is immaterial, however, as per note at Annexure P-3, Balbir Singh, father of defendant No.2, on his own, changed Khasra No.306 to 305 measuring 16 marlas. Report of Local Commissioner (Ex.P7), established that one has to cross vacant piece of land for reaching the gait of the plaintiffs and at that time, it was a vacant land. Site plan (Ex.P8) did not show any other *rasta* for the approach of the house of the plaintiffs. Jamanbadi for the year 1968-69 (Ex.P19) showed the ownership of Khasra No.305 Panchayat Deh, measuring 16 marlas. The site plan attached with the plaint and one prepared by the Local Commissioner, established on record that the plaintiffs had been using Khasra No.305 as passage for a very long time, in such a manner, the suit land could not be transferred by the Gram Panchayat in favour of the private persons. The resolution and other evidence, placed on record, did not mention any purpose, therefore, the sale of either of Khasra Nos.305 and 306, was void and ineffective, thus, urges this Court for setting aside the concurrent findings, under challenge, as there is gross illegality and perversity.

Mr. Ajay Ghangas and Ms. Ekta, learned counsel appearing on

behalf of respondent Nos.2 and 3, supported the judgments and decrees of the Courts below by submitting that the documentary evidence i.e. permission granted by the BDPO (Ex.D3), in pursuance to the resolution submitted by the Gram Panchayat, established the change of Khasra No.306 to 305. Entry in the jambandi (Ex.D18), accordingly, was reflected, whereby khasra Nos.305 and 306 were to be shown in ownership of Ram Kumar son of Balbir Singh. No relief of declaration has been sought, in such circumstances, simpliciter suit for injunction was not maintainable. The plaintiffs have not been able to establish the possession of Khasra No.305, which was a vacant land. There already existed khasra number. Photographs showed that the construction was raised after the report of the Local Commissioner, therefore, no equity lied, much less, right of ingress and outgress, thus, urges this Court for dismissal of the present regular second appeal as there is no illegality and perversity in the concurrent findings of fact.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination"

- 1. Whether the plaintiffs, in a suit for injunction, can be permitted to assail the auction proceedings either of Khasra No.305 or 306?*
- 2. Whether the judgments and decrees of the Courts below suffer from illegality and perversity?*

The report of the Local Commissioner (Ex.P7) revealed that it was a vacant land, whereas it did not establish that khasra No.305 was a passage. There was no dispute that khasra No.305, which in the revenue record, was shown as a *gair mumkim rasta*. The evidence of the witnesses

of the plaintiffs established that the plaintiffs had been using the passage on the Western side. The auction was held on 23.03.1967. Defendant No.1 was held to be owner on 23.03.1967 (Ex.D4). The sale deed was executed on 03.06.1970 (Ex.D6), whereas defendant No.1 sold the property to defendant No.2 on 25.10.1977 (Ex.D10).

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees of the Courts below as the same are based upon the appreciation of oral and documentary evidence. The substantial questions of law, as framed above, are answered in favour of the respondents-defendants and against the appellants-plaintiffs. No ground is made out for interference.

I cannot remain oblivious of the fact that this Court, vide order dated 23.04.1987, stayed the dispossession of the plaintiffs, accordingly, the interim order is ordered to be vacated.

Resultantly, the present regular second appeal is dismissed.

08.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**