

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1923 of 1988(O&M)
Date of Decision.03.04.2019

Ramji Lal (since deceased) through LRs ...Appellant

Vs

Ram Avtar ..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Umesh Aggarwal, Advocate
for the appellant.

Mr. Arnav Sood, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent finding of fact whereby the suit for permanent, mandatory and prohibitory injunction restraining the defendant from constructing the land marked as JKLM and in the alternative suit for easementary right on the land in dispute, has been dismissed by the trial Court and affirmed in appeal.

It was averred that plaintiff purchased double storey house bearing No.MCH 29-B-1 vide registered sale deed dated 13.10.1978 from one Brij Bhushan and Brij Mohan sons of Siri Niwas. On the Northern side is the house owned by defendant, who had purchased it a year back. Prior to sale, both these houses were owned and possessed by Siri Niwas. The land in dispute marked JKLM which was about 6'x10' was commonly used for entrance in both houses being M.C. Street but defendant forcibly wanted to occupy the disputed land and construct an annexe along with house.

In these circumstances, cause of action accrued to file the suit.

Defendant filed the written statement and opposed the suit by raising various preliminary objections. It was stated that prior to purchase by the plaintiff, the site in dispute was M.C. street and was never used as an entrance to both the houses.

The trial Court on receipt of replication framed following issues and additional issues:-

“1. Whether the suit in dispute mark JKLM in the site plan Mark A is a part of Municipal Street if so its effect?

OPP

2. In case issue No.1 is not proved, whether the plaintiff has got right of easement, out of necessity as alleged on the site in dispute? OPP

2-A. Whether the plaintiff has got the natural rights on ingress and outgress as well as air, light arising out of the incidence of the location of his house and location of the place in dispute? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the suit is time barred? OPD

5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

6. Relief.”

The plaintiff in support of pleadings examined eight witnesses and brought on record Ex.P1 to P19 whereas the defendant examined four witnesses and brought on record Ex.D1 to D6.

Mr. Umesh Aggarwal, learned counsel appearing on

behalf of the appellant submitted that Ex.P19 is the clincher for adjudication of the suit as it revealed that Siri Niwas had sought permission to build a *chabutra* on the municipal land in front of his house and to open a door in place of a window. The aforementioned evidence was enough to form an opinion of encroachment for grant of injunction. Resolutions of MC Ex.P11, P14, P15, P17 and P19 and mark X are the testimonies of the same. Identity of the property, in such circumstances, was not in dispute and therefore, there is perversity.

Per contra, Mr. Arnav Sood, learned counsel appearing on behalf of the respondent submitted that sanction plan Ex.D3 and survey sheet Ex.D4 clearly established that site was not part of M.C street rather *chabutra* of the house of defendant. Plaintiff miserably failed to prove identity of the property to seek injunction, much less, mandatory injunction, thus, urges for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of courts below and of the view that there is no force and merit. It is settled law that a person asserting the aforementioned claim has to stand on his own legs. It has not been proved on record that it was public street or there was a common passage being used by both parties for ingress of the house. Submission of application for construction of *chabutra* is no ground unless some sanctioned plan had been brought on record. Plaintiff purchased the house from person whose house was purchased by defendant. He was expected to see availability of frontage of the house being purchased by him i.e. a buyer must make reasonable

enquiry, in such circumstances, demarcation by local commissioner was a *sine qua non* which is conspicuously absent.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No