

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

RSA-525-1996(O&M)

Date of decision:-20.9.2019

Smt.Sushila and others

...Appellants

Versus

Chander Bhan and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Rivayat Hayer, Legal Aid Counsel
for the applicants/appellants.

Mr.Nipun Verma, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

CM-7446-C-2019

This is an application under Order 41, Rule 19 read with
Section 151 CPC for restoration of the regular second appeal.

Heard.

For the reasons mentioned in the application, the same
stands allowed and the appeal is restored at its original number and is
taken up for disposal on merits.

RSA-525-1996(O&M)

Briefly stated, facts of the case are that plaintiffs

Sh.Chander Bhan and Sh.Satyavir, both sons of Sh.Santu Ram,

residents of village Chhapar, Tehsil Dadri had filed a suit against the defendants Smt.Sushila wife of Sh.Har Chand son of Sh.Neki Ram as well as S/Sh.Ram Kalan, Omla, Krishan, Om Parkash, Ramphal sons of Neki Ram, residents of that very village, seeking a decree for permanent injunction restraining the defendant No.1 from interfering in their peaceful possession and from opening any door or erecting any gate in the site in suit in connivance with defendants No.2 to 6. In the said suit, they had arrayed Sh.Santu Ram son of Sh.Om Chand of their village as proforma defendant No.7.

As per the case of the plaintiffs, they along with proforma defendant had left some vacant land adjacent to their houses for the purpose of tethering their cattle and they are using it as such; the house of defendant No.1 – Smt.Sushila is situated on the southern side of the site in suit; the door of her house opens towards the public passage; though defendant No.1 has no right or concern with the site in question but she wanted to open the door forcibly and encroached upon the site without any right, not listening to the requests of the plaintiffs to desist from doing so, as such they had brought the suit in question in the Court.

On notice, only defendants No.1 and 5 put in appearance to offer a contest, whereas remaining defendants did not appear despite service and were proceeded against ex-parte.

In the written statement filed by the appearing

defendants, they controverted the assertions in the plaint coming up with a plea that site in suit is shamlat chowk, which is being used by them along with other persons having their houses nearby; the door of the house of the defendants open towards the site in suit; defendant No.1 has been using the site for tethering her cattle; since door of the house of defendant No.1 is already in existence opening towards the site in suit, therefore, there is no question of opening any fresh door towards that side. According to the answering defendants, the plaintiffs wanted to obstruct free flow of the dirty water coming from the house of defendant No.1 through the small drain and the suit has been filed to harass the defendant No.1. In the written statement so filed by answering defendants, they had taken various legal objections while praying for dismissal of the suit.

The plaintiffs had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff and proforma defendants are the owners in possession of the suit property on the ground as mentioned in the plaint? OPP.
2. Whether the suit of plaintiffs is not maintainable in the present form? OPD.

3. Whether the suit of plaintiffs is bad for non-joinder of necessary parties? OPD.
4. Whether the plaintiffs have got no locus-standi to file the suit? OPD.
5. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 1.10.1993 dismissed the suit of the plaintiffs.

Feeling aggrieved by the said judgment and decree, the plaintiffs filed an appeal before learned District Judge, Bhiwani, which was assigned to Additional District Judge, Bhiwani, who vide judgment and decree dated 30.1.1996 accepted the appeal and set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs restraining defendant No.1 from opening any apperture towards the site shown in red by letters ABCE in the site plan Ex.P2.

Being dissatisfied with the judgment and decree passed by Additional District Judge, Bhiwani, the defendants filed the present regular second appeal before this Court, notice of which was issued and the respondents No.1 and 2 have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court while coming to the conclusion that the plaintiffs had failed to make out a case for grant of permanent injunction has given following reasons:

- (i) the failure of the plaintiffs to bring any cogent documentary evidence to show that they are owners of the site in question;
- (ii) that the defendants having proved by bringing evidence that door of house of defendant No.1 is in existence towards the site in suit and defendant No.1 is using this site for ingress and egress to her house and plaintiffs have no concern therewith;
- (iii) that the site in suit is a common chowk being used by all the inhabitants of the village.

On the other hand, learned Additional District Judge, Bhiwani has observed in para No.8 as under:

8. The site in dispute marked by letters ABCE measuring 870 Sq.yards. According to the plaintiffs, the same is owned and possessed by them. It is to be seen whether the site in dispute is a shamlat chowk or exclusive land belonging to the plaintiffs. Santu, their father appeared as PW4 and stated that he had purchased some land and the land in dispute which belongs to him and there had been no thoroughfare over

it and that the same had been partitioned in four parts in the east towards the land so purchased by Santu meaning thereby said site-in-dispute measuring 870 Sq. feet shown in red in the site plan Ex.P2 forms part of land measuring 2700 Sq. feet and 300 Sq. yards so purchased by Santu from Radhe Sham and further more, had this site-in-dispute been a shamlat chowk, there had been a proper gate of the plaintiffs house towards it and furthermore over, no opening of the house of Tek Chand falling towards east of it opens towards it. Likewise the gate of Nanhar in the south also does not open in it. The same opens in the street further falling towards east of it. All these circumstances shows that the site-in-dispute is not a shamlat-chowk and is exclusively owned and possessed by the plaintiffs who use the same. Thus, for the reasons given above, it is made out that the learned trial Court has erred in deciding issue No.1 against the plaintiffs. So, finding recorded over this issue stands set aside and thus, the appeal is accepted and the suit is decreed that the site-in-dispute is owned and possessed by the plaintiffs and the defendant No.1 is restrained from opening any apperture in the said site shown in red by letters ABCE in the site plan Ex.P2.

I find that the trial Court has failed to analyze the factual and legal position properly and in the process came to a wrong conclusion that plaintiffs were unable to make out a case for grant of permanent injunction, whereas the Court of Additional District Judge, Bhiwani by proper appraisal and appreciation of evidence and correct interpretation of law has found that the site in dispute is not a shamlat chowk and is exclusively owned and possessed by the plaintiffs, who use to same, therefore, defendant No.1 etc. have no right to open any door towards the same.

Learned Additional District Judge, Bhiwani was fully justified in setting aside the judgment and decree passed by the trial Court and decreeing the suit of the plaintiffs.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Bhiwani.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

20.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No