

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

**RSA No.3571 of 2019 (O&M)
Date of Decision:25.07.2019**

Pritam Singh and others

.....Appellants

Versus

Darshan Singh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.S.K.Biriwal, Advocate
for the appellants.

LISA GILL, J.

Appellants-plaintiff are aggrieved of judgement and decree dated 06.11.2017, passed by learned Additional Civil Judge (Sr. Division), Barnala, as well as judgement and decree dated 22.04.2019, passed by the learned District Judge, Barnala

Brief facts necessary for the adjudication of the case are that appellants-plaintiffs filed a suit for permanent injunction for restraining the respondent-defendant from encroaching upon the common passage marked 'ABCD' in the site plan attached with the suit. It is pleaded that the passage as mentioned above, was being used as a passage by the plaintiffs as well as all other villagers. The same had been brick-lined by the Gram Panchayat, at its own costs and expense. A drain had been constructed by the Gram Panchayat, as well. It is further pleaded that the passage in dispute adjoins the house of the defendant, but he has no concern with the same and has no

right to include the same in his own property. A civil suit no. 64 of 11.09.1950, titled as 'Sadda singh Vs. Mukand Singh etc.,' was filed in which the suit property was declared to be a part of passage having a width of 31 feet. Another civil suit titled as 'Bachan Singh etc., Vs. Mukand Singh etc.' was dismissed. The suit property was also declared be to a passage. It is claimed that the defendant was interfering in the peaceful possession of the suit property which is a passage. Hence the suit was filed.

Defendant-respondent resisted the suit while raising various preliminary objections. It is denied that the suit property was a passage or that it was being used by the plaintiffs and other co-villagers as a passage having been brick-lined by the Gram Panchayat. It is stated that the property was purchased by the father and uncle of the defendant from Shingara Singh and others and formed a part of his property measuring 2 Bighas and 9 Biswasi. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled for permanent injunction as prayed for?OPP
2. Whether the plaintiff has no locus-standi and cause of action to file present suit?OPD
3. Whether suit of the plaintiff is not maintainable in the present form?OPD
4. Whether plaintiff is estopped from filing of presnt suit by their own act and conduct?OPD
5. Whether the suit of plaintiffs is false and frivolous?OPD
6. Whether plaintiffs filed the present suit just to harass the defendant and liable to be dismissed with special costs? OPD
7. Relief .

Both the parties led evidence in support of their respective claims/stands.

Plaintiffs relied upon the testimony of PW-1-Saudagar Singh, Panch and PW-2-Joginder Singh, Ex.Panch. Plaintiff-Tarsem Kumar testified as PW-3. PW-4-Gurmukh Singh, draftsman, who prepared the site plan Ex.P-1 was also examined. DW-2-Darshan Singh stepped in the witness box and proved the original sale deed dated 09.06.1965, Ex.D-2 and site plan, ExD-3. Kirpal Singh, DW-1, was examined as well.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record, concluded that the property in question was not proved to be a brick-lined passage maintained by the Gram Panchayat. Suit was accordingly dismissed.

Appeal preferred by the present plaintiffs was also dismissed by the learned District Judge, Barnala, vide impugned judgement and decree dated 22.04.2019.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants-plaintiffs vehemently argues that both the learned Courts below have ignored the relevant evidence on record and there is misreading of evidence on record and both the learned Courts below have grossly erred on facts and in law while dismissing the suit filed by the appellants-plaintiffs. The evidence on record, it is submitted clearly proves the case as set up by the plaintiffs. Learned Courts below have wrongly relied upon the photographs Ex.D-1, sale deed Ex.D-2 and site plan Ex.D-3. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside. Consequently suit filed by the appellants-plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have gone

through the file with his assistance.

Specific and catagoric case set up by the plaintiffs is that the suit property belonged to the Gram Panchayat, Kattu, but it is a matter of record that no evidence has been produced by the plaintiffs to substantiate this plea. PW-1-Saudagar Singh and PW-2-Joginder Singh, Ex.Panch, have stated that a resolution was passed by the Gram Panchayat pursuant to which brick-lining was done. Surprisingly, there is no such resolution or any other documentary evidence to substantiate such an assertion. The plaintiffs have doubtlessly, withheld the best evidence which necessarily would have been in the shape of the resolution of the Gram Panchayat. The Gram Panchayat is not even impleaded as a party. Assertion that the suit property was declared a passage in earlier decisions of the civil Court, was found to be incorrect as the property in question could not be identified to be the property which was a subject matter of the said civil suits. Ex.PY, is an order vide which the suit of the plaintiffs was dismissed as withdrawn with liberty to file afresh. Earlier Cvil Suit, Ex.PZ, was dismissed with costs. However, it is relevant to note that it is specifically observed by the learned District Judge, Barnala in the instant case that the boundaries of the property mentioned in Ex.PZ and of the property in the present suit do not stand identified to be one and the same. PW-3-Tarsem Kumar, in his testimony has admitted that the gate of the defendant's house opens in the disputed property. At the same time, PW-4-Gurmukh Singh, Draftsman, in his cross-examination has admitted that he prepared site plan Ex.P-1 on directions of Pritam Singh and he never visited the suit property. PW-2-Joginder Singh, Ex.Panch, on the other hand stated that the site plan, Ex.P-1 was prepared by

the draftsman subsequent to visiting the spot, thereby creating a dent in his testimony. Both the learned Courts below, in the factual matrix of the case, have rightly dismissed the suit filed by the plaintiffs.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings of fact, vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 06.11.2017 and 22.04.2019 passed by the learned Additional Civil Judge (Sr. Division) Barnala and learned District Judge, Barnala, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

25.07.2019

s.khan

[LISA GILL]
Judge

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