

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

RSA-1736-2011(O&M)

Date of decision:-22.2.2019

Smt.Inderawati

...Appellant

Versus

Ranbir and others

...Respondents

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

Present: Mr.Ramesh Malik, Advocate
for the appellant.

Mr.Kulvir Narwal, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Inderawati widow of Dharampal, resident of village Ladian, Tehsil and District Jhajjar had brought a suit for permanent injunction against defendants Attru, Mahender, Ranbir and Bijender, all residents of that very village on the averments that she is owner in possession of residential house shown as 'CDER' in blue colour in the site-plan attached with the plaint situated within *abadi deh* of village Ladian, Tehsil and District Jhajjar; that she is a poor widow, who had succeeded to such house on death of her husband; that on the western side of her house, there is a private chowk-cum-common passage depicted as 'ABCD' and shown in red colour in the site-plan, which was meant for use of plaintiff and defendants; that such chowk-cum- passage was left by ancestors of the plaintiff and defendants

more than 100 years earlier; that gate of house of plaintiff and those of defendants open towards that passage; that water outlet of the house of plaintiff also open towards that side, however defendants wanted to encroach upon such private chowk-cum-common rasta, to which they had no right; that they also wanted to close the gate and the water outlet of the house of the plaintiff not listening the requests of plaintiff by the defendants not to encroach upon the private chowk cum disputed passage or to close the door and water outlet of the plaintiff, feeling aggrieved she brought the suit for permanent injunction against them.

On notice, defendants appeared and filed written statement contesting the suit contending that the plaintiff had filed a wrong site plan and that she was a quarrelsome lady; that defendants were old and peace loving persons; that the plaintiff wanted to encroach upon the land of defendants by way of filing the suit in the Court; that the land depicted as 'ABCD' by the plaintiff in the site-plan was actually owned and possessed by the defendants from the time of their forefathers and they were using the same as their open space; that the plaintiff wanted to open the door towards that side illegally, to which she had no right. Refuting the remaining allegations in the plaint, the defendants prayed for dismissal of the suit.

Replication was not filed. On the pleadings of the parties, following issues were framed vide order dated 3.4.2003:

1. Whether the plaintiff is owner in possession of the dispute house as detailed in para No.1 of the plaint and shown with letters CDEF with blue colour in the site plan attached therewith? OPP.

2. Whether there existed a private chowk-cum-common rasta of the plaintiff and the defendants shown with letters ABCD in red colour in the plaintiff's site plan which was being used as such by the plaintiff and the defendants? OPP.
3. Whether the defendants are illegally encroaching upon the disputed site and are illegally closing the gate and the water outlet of the plaintiff opening towards the disputed site? OPP.
4. Whether the plaintiff has no cause of action to file the present suit? OPD.
5. Relief.

In order to prove her case, the plaintiff got her statement recorded as PW1 besides examining Krishan as PW2.

On the other hand, the defendants had examined Sh. Raj Pal Mor, Advocate as DW1, Sarup Singh as DW2, Smt.Roshni as DW3, Sh.Mahender Singh as DW4 and Sh.Devender as DW5.

In view of the findings on issues, the trial Court partly decreed the suit to the effect that both the parties to the suit were directed not to close the common rasta and chowk and not to close the gate and water outlet of each other in any manner. This was so done vide judgment and decree dated 6.8.2008.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, which was assigned to Additional District Judge, Jhajjar, who vide judgment and decree dated 28.2.2011 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by Additional District Judge, Jhajjar and she has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Jhajjar be set aside.

On getting notice of regular second appeal, the respondents/defendants have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

Permanent injunction dealt with by Section 38 of the Specific Relief Act, 1963 is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts and if he or she tries to conceal any material fact from the Court, then such relief is not to be granted. Clause (i) of Section 41 of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

Here in this case, the plaintiff had approached the Court submitting that the gate and water outlet of her house open towards the dispute side. A Local Commissioner in this case was appointed, who had visited the spot and submitted the report observing therein that he had

gone to the spot on 10.7.2014 at about 3:00 p.m. after giving notice to counsel for the parties and carried out inspection in presence of parties and their counsel preparing a rough site plan observing that the house of plaintiff was there, which was an old construction; that had recently constructed a wall having height of 6 feet obstructing the passage of defendants. The said report nullifies the contention of plaintiff that gate and water outlet of her house had been there towards the site in question since long. The trial Court did not consider that fact while passing the decree and as a matter of fact a very strange type of decree had been passed, in that way, both the parties had been directed not to close the common rasta and chowk and not to close the gate and water outlet of each other. The trial Court should have seen whether the plaintiff had been able to make out a case for grant of permanent injunction or not granting relief to her if she was successful in proving her case otherwise dismissing the suit but issuing directions to both the parties in such a way is not sustainable and not in accordance with law more particularly when defendants had not come up with any counter claim. The decree passed by the trial Court was not legal and seems to have been passed without due application of mind.

The First Appellate Court has properly accepted the appeal and set aside the judgment and decree passed by the trial Court observing that there is no concrete evidence on the file that plaintiff has any right, title and interest in the suit property and mere opening of a gate during the pendency of the suit is not sufficient to claim injunction. It has further been observed that even otherwise the plaintiff is not entitled to get the

discretionary relief of injunction because she has taken out the gate towards the disputed property during the pendency of the present suit, as such has concealed material facts and further no cause of action has arisen in her favour to bring the suit.

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, Jhajjar.

The appeal stands dismissed accordingly.

22.2.2019

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**