

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

RSA No.2634 of 2012 (O&M)
Date of decision: 08.03.2019

Parma and another

... Appellants

Versus

Sanjay Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Amit Jain, Advocate
for the appellants.

Mr. Sudhir Aggarwal, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction filed by respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 26.07.2010 and appeal preferred by unsuccessful defendants No.1 to 3/appellants was dismissed by the Additional District Judge, Nuh vide judgment and decree dated 10.01.2012.

The respondent/plaintiff filed suit for permanent injunction claiming three reliefs namely (i) restraining the defendants from blocking gate of plaintiff marked by letters DE shown in green color in the site plan, (ii) restraining the defendant from raising any sort of construction in front of gate aforesaid and (iii) restrain them from interfering in use and

occupation of rasta detailed in para 1 of the plaint.

The facts relevant for disposal of the present appeal are that the respondent/plaintiff claimed himself to be owner in possession of residential plot purchased from Smt. Shakuntla Devi vide registered sale deed No.641 dated 21.06.2000, described in detail in para 1 of the plaint. It is averred that respondent constructed boundary wall over the same. In southern side of plot of respondent, there is a common rasta in which he installed a gate for ingress and outgress to his plot. The respondent is using the same since the time of its purchase.

The rasta was constructed by Municipal Committee, Punhana. The villagers are using the same for the past 50 years. The defendants are strong headed persons and want to block gate of plaintiff illegally and forcibly and are also threatening to interfere in peaceful use and occupation of rasta. Hence the suit.

The appellants and their co-defendant filed the written statement raising preliminary objections inter alia regarding non-maintainability of the suit; locus standi to file the suit; the respondent being estopped by his own act & conduct and concealment of true facts. They denied the respondent to be owner in possession of disputed plot and correctness of the site plan referred to in the plaint. It is pleaded that a panchayat was held on 28.03.2008 and father of the plaintiff agreed that no door will be opened in the southern side. The rasta in dispute is only joint rasta of the adjoining locality and saini chaupal. The respondent/plaintiff has no concern with said rasta. The main gate of disputed plot is installed in

eastern side and open in rasta aam and the plaintiff is adamant to open his gate in southern side without any right.

The respondent/plaintiff preferred replication and reiterated the averments raised in the plaint.

The trial Court framed the following issues:-

1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether the plaintiff is estopped from filing the present suit by his own act, conduct etc?OPD
5. Relief.

To prove his case, respondent/plaintiff appeared in the witness box and examined Ishak PW2, Tula Ram Gupta PW3 and Naresh Kumar Draftsman PW4.

To rebut evidence of the respondent/plaintiff, defendants examined Kamal Parkash DW1 and one of the defendants Dal Chand appeared as DW2.

Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 in favour of the respondent/plaintiff while issues No.2 to 4 were decided against the defendants and eventually suit of the respondent was decreed for permanent injunction restraining the defendants from blocking gate of plaintiff marked by letters DE and also from raising any sort of construction in front of gate

of the plaintiff and further restrained them from interfering in use and occupation of rasta in dispute in any manner.

As has been noticed hereinbefore, appeal preferred by some of the defendants namely Parma, Dal Chand and Keemti Lal was dismissed by the Appellate Court and findings recorded by the trial Court were affirmed without any variance.

Still feeling dis-satisfied, the present appeal has been preferred by Parma and Dal Chand defendants No.1 and 3, respectively in the suit.

Counsel for the appellants would argue that the respondent/plaintiff claimed three fold reliefs in respect of grant of permanent injunction but the trial Court by recording findings only in respect of rasta in question even allowed the first two claims in respect of gate DE shown in green colour in the site plan Ex.P1 prepared by Naresh Kumar Draftsman without visiting the spot and on the instructions of respondent/plaintiff Sanjay Kumar, as admitted by the witness in his cross examination. It is vehemently argued that neither the trial Court nor the Appellate Court has recorded any findings as a matter of fact that any such gate DE exists at the spot despite the appellants having raised a specific and categorical plea in the written statement that no such gate exists at the spot. It is further argued that prior to filing of the suit in April, 2008, a compromise was effected on 28.03.2008 Ex.D1 and the said compromise admittedly bears signatures of Kishan Saroop, father of the respondent/plaintiff. According to counsel, as per the compromise Ex.D1, it was agreed that the situation existing at the spot would be maintained as it is and no door

would be opened on the southern side in front of panchayti sainsi chaupal. It is further argued that the Courts have committed a serious error rather illegality by ignoring the compromise Ex.D1 by holding that the same is not signed by the respondent himself or signatures of his father on the compromise would not bind him. The Appellate Court has gone to the extent of saying that this compromise may be the result of undue influence and pressure upon Sh. Kishan Saroop but no plea of this sort was raised in the replication to challenge the compromise despite specific averments in para 2 of the written statement on merits with regard to dispute having been settled with intervention of panchayat and father of the respondent signed the compromise.

Another submission made by counsel is that the trial Court vide order dated 20.11.2008 appointed Sh. Habib Ahmed, Advocate as a Local Commissioner to report regarding existing position at the spot. The Local Commission visited the spot on 20.11.2008 and submitted report dated 06.01.2009 wherein it is mentioned that disputed door is lying closed by raising construction but the construction appears to be new/latest. It is argued that the respondent or for that matter neither of the parties filed any objections against report dated 06.01.2009.

The respondent/plaintiff appeared in the witness box on 20.07.2009 but his testimony is conspicuously silent with regard to the disputed gate found lying closed in November, 2008 nor he has specifically stated as to when the gate in question was installed despite a compromise was effected in March, 2008 to which father of the respondent is a

signatory. It is vehemently argued that judgments passed by the Courts allowing discretionary and equitable relief of injunction particularly in respect of gate in question are the result of non-application of mind, non-appreciation of pleadings and report of the Local Commission.

Counsel representing the respondent/plaintiff has supported findings of the Courts with the submission that rasta on the southern side of plot owned by the respondent purchased from Smt. Shakuntla Devi in the year 2000, is proved to be rasta aam, therefore, the appellants cannot be permitted to use force to block the gate that opens in the rasta on southern side nor can they stop the respondent from using the rasta sare-aam. It is further argued that the respondent has raised a categorical plea that he has been using the rasta and disputed gate since purchase of the plot and reiterated the same in his testimony on oath recorded on 20.07.2009.

I have heard counsel for the parties, perused the paper book and records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to examine findings of the trial Court on issue No.1. As has been rightly argued by counsel for the appellants, the trial Court has not recorded any findings with regard to existence or non-existence of gate DE in the southern boundary wall of the plot purchased by the respondent from Smt. Shakuntla Devi in the year 2000. The entire discussion by the trial Court is in respect of the rasta on the southern side and by holding that the said rasta is a rasta sare-aam, the Court in concluding para 16 qua issue No.1 has allowed the relief in respect of the

disputed gate and eventually allowed the decree for permanent injunction even in respect of the disputed gate. Similarly, the Appellate Court has not recorded any positive findings with regard to existence of the disputed gate or the same being used by the respondent/plaintiff since he allegedly purchased the plot in question and raised boundary wall of the said plot.

The question that calls for determination is, whether the respondent/plaintiff is able to establish that a door/gate marked DE shown in green color in the site plan Ex.P1 stated to be opened in the rasta on the southern side of the plot actually existed at the spot on the day of filing the suit.

The plaintiff in para 3 of the plaint has averred, reads thus:-

That in the southern side there is a common rasta (rasta sare-aam) of the plot of the plaintiff in which the plaintiff has installed gate for outgress and ingress in his plot which is marked by letters DE shown in green colour in the site plan. The plaintiff is using the same since the time of purchase and before him Shakuntla Devi were using the same for outgress and ingress. The said rasta is rasta sare-aam which is constructed by the then Municipal Committee, Punhana by the cement concrete and the people of the village are using the same since last more than 50 years regularly and continuously without any break and interruption and the defendants have no right, title or interest in the rasta in question.

Perusal of the aforesaid extract makes it evident that the respondent sought to allege that the gate marked by letters DE was in existence even before the plot was purchased by him from Smt. Shakuntla

Devi as it has been alleged that Shakuntla Devi was using the same for outgress and ingress. This plea of the respondent in respect of gate being used by Shakuntla Devi does not find corroboration from his own testimony rather gets falsified and belied from the averments raised in para 2 of the plaint wherein he had stated that he constructed the boundary wall over the suit property. Meaning thereby that there was no boundary wall existing when the respondent purchased the plot in question. The non-existence of boundary wall of the plot also gets corroborated from the recitals in the sale deed dated 21.06.2000 and site plan appended thereto, available on records. This fact shows that the respondent/plaintiff has not approached the Court with clean hands to seek injunction, in respect of the gate in question.

The pleadings as well as statement of the respondent before the Court are conspicuously silent as to the date, month or year or period by way of approximation when the respondent constructed boundary wall of the plot purchased from Smt. Shakuntla Devi. Perusal of the compromise Ex.D1 would reveal that some application was submitted to SHO, Police Station, Punhana and there was dispute with regard to gate towards rasta on the southern side of the property of the respondent. Admittedly, the compromise Ex.D1 bears signature of Sh. Kishan Saroop, father of the respondent besides signatures of various other persons. The compromise Ex.D1 records that with the intervention of the panchayat, dispute has been settled and the parties have agreed to maintain status quo ante and no door would be opened towards southern side in front of panchayati saini

chaupal. Indeed, the respondent is not a signatory to this document Ex.D1. The appellants in para 2 of the written statement raised a specific plea with regard to compromise on 28.03.2008 and Kishan Saroop father of the respondent being a signatory to the said compromise. In the replication to para 2 of the written statement on merits, there is not even a whisper to controvert the allegations in respect of compromise arrived with the intervention of panchayat and respectables of the village on 28.03.2008. The respondent/plaintiff neither disputed the compromise dated 28.03.2008 nor raised any such plea that his father could not reach any such compromise qua the property in question nor submitted that signatures of his father were obtained under duress/coercion. The respondent has not pleaded that he does not maintain cordial relations with his father, therefore, any such settlement/compromise under the signatures of his father would not bind him. The father of the respondent did not appear in the witness box to say something about the compromise Ex.D1. In the given circumstances, it can safely be held that compromise Ex.D1 is a relevant piece of evidence but the Courts have grossly erred rather committed illegality by discarding the compromise for reasons which are neither borne out from materials on record nor legally tenable. As per the compromise, father of the respondent agreed that no gate would be opened in the southern side towards panchayati saini chaupal, sufficient to prove that no gate was in existence on 28.03.2008. There is no plea raised by the respondent that a gate was opened towards southern side after 28.03.2008 and before filing the suit on 23.04.2008. The plea of respondent with regard

to existence of a gate in the southern boundary of the plot gets falsified and belied from report of the local Commission who recorded a categorical observation that the gate stands closed by making construction. The statement of the respondent recorded as a witness in July, 2009 is conspicuously silent to explain about closure of the gate much less to say who closed the gate and when. The Courts have failed to appreciate the document Ex.D1 and report of the Local Commission in right perspective while accepting plea of the respondent for grant of injunction qua the disputed gate. In view of the discussion made hereinbefore, I have no hesitation to conclude that as a matter of fact no such gate was in existence at the time of filing of the suit and the present suit was filed by the respondent to create a right in his favour to open a gate in the southern boundary of the plot towards rasta on southern side. In this view of the matter, judgments of the Courts granting injunction in respect of the disputed gate are grossly faulty rather perverse, thus, cannot be allowed to sustain, accordingly set aside.

The respondent/plaintiff also sought injunction with regard to his right to use the rasta towards southern side of his plot. Counsel for the appellants has failed to successfully assail consistent findings with regard to the said rasta being rasta sare-aam and public at large being entitle to use the said rasta. In this view of the matter, judgments and decrees passed by the Courts with regard to right of the respondent to use the rasta in question being a member of the public neither suffer from error nor infirmity and ordered to be affirmed.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The judgments and decrees passed by the Courts granting permanent injunction restraining the defendants including appellants from blocking gate of plaintiff marked by letters DE shown in green colour in site plan and raising any sort of construction in front of gate aforesaid are set aside and suit filed by the respondent/plaintiff for the aforesaid relief is dismissed. However, the judgments and decrees passed by the Courts restraining the defendants from interfering in use of rasta in dispute by the respondent/plaintiff are affirmed, leaving the parties to bear their own costs.

08.03.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No