

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

RSA-2958-2012(O&M)

Date of decision:-15.10.2019

Buta Singh

...Appellant

Versus

Gurjit Singh @ Titu and others

...Respondents

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

Present: Mr.Gurcharan Dass, Advocate
for the appellant.

Mr.H.S. Dhindsa, Advocate
for respondents No.1 and 3.

H.S. MADAAN, J.

In nutshell, the facts of the case are that plaintiff Buta Singh son of Sh.Faqir Singh, aged about 58 years, a resident of village Leehan, Tehsil Jagraon, District Ludhiana had brought a suit against defendants i.e. Gurjit Singh alias Titu, Swaran Kaur and Gurcharan Kaur, all residents of his village, seeking a decree for mandatory injunction for issuance of direction to the defendants to remove the pillar and door installed at points marked A-B shown as red in the site plan attached with the plaint, in the common passage shown as blue in the site plan, which street is in existence for the last about 100 years and is leading to house of the plaintiff shown as yellow in the site plan situated in the area of village Leehan, Tehsil Jagraon, District Ludhiana and to restore the said common

passage to its original condition; in addition to that craving for grant of permanent injunction restraining the defendants from making any sort of obstruction in the peaceful use of the disputed common passage shown as blue in the site plan for the egress and ingress to the house of the plaintiff by closing the door installed at points marked A-B or by creating any obstacle and further restraining the defendants from raising any sort of construction in the disputed street and from encroaching upon any part thereof merging that into their own property shown as green in the site plan.

As per the version of the plaintiff, he is owner in possession of the house shown as yellow in the site plan annexed with the plaint, whereas defendants are owners of the house shown as green in that very site plan situated within the red line of village Leelan, Tehsil Jagraon, District Ludhiana; that the common passage shown as blue in that site plan leading from eastern side to western side is in existence for last about 100 years for approaching residential house of plaintiff, defendants and others; that the plaintiff has been using this passage since from the beginning without any obstruction, interruption and hindrance from anybody, in that way, he has matured his right of easement; that some time before filing of the suit, the defendants taking undue advantage of the fact that their houses are situated on both sides of the disputed passage having width of 5' – 6" have installed one 3' – 8" wide 7' – 0" high door at points marked A-B shown red in the site plan by constructing a pillar 1' – 2" at point marked A, illegally and forcibly thereby encroaching upon the passage, resultantly, the plaintiff is unable to use it for coming from and

going to his house, therefore value and utility of his house has been affected; the defendants threatened to raise further construction of pillars and to encroach upon the passage more, not listening to the requests of the plaintiff to desist from doing so, as such the plaintiff brought the suit in question.

On notice, the defendants appeared and filed a written statement contesting the suit *inter alia* raising preliminary objections that the plaintiff had no locus standi to bring the suit regarding the street khas, which was left out by the grandfather of defendant No.1, the predecessor-in-interest of the defendants from his own property for their own use; that the plaintiff was estopped by his own act and conduct from filing the suit; that the plaintiff had not approached the Court with clean hands and concealed true and material facts from the Court. On merits, the defendants submitted that the site plan filed by the plaintiff was factually wrong, whereas the site plan filed by the defendants was correct; that the alleged passage is not a common one; that the house of plaintiff is situated on the main passage which is on the northern side of the plaintiff and which is 16' wide; that the passage in dispute is not being used by the plaintiff for ingress and egress to his house; that the gate/door shown at point A-B was constructed about 40 years back at the time of carving out of the street and the plaintiff has no right to use this passage; that the plaintiff is an influential man and remained Sarpanch of the village for several years; the answering defendants have not encroached upon any part of the passage; that the plaintiff had been using the passage only with permission of the defendants, otherwise he has no independent right of

using that passage. Refuting the remaining averments in the plaint, the defendants prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to relief for mandatory injunction as prayed for? OPP.
2. Whether the plaintiff is entitled to relief for permanent injunction as prayed for? OPP.
3. Whether the plaintiff has got no locus standi to file the present suit? OPD.
4. Whether the plaintiff has concealed the material facts, if so, its effect? OPD.
5. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff, issue No.2 in favour of the plaintiff and against the defendants, issues No.3 and 4 against the defendants. Resultantly, suit of the plaintiff was decreed partly and a decree for permanent injunction was passed in favour of the plaintiff and against the defendants restraining them as well as the persons claiming under them from interfering in the use of the passage by the plaintiff and the defendants were restrained to put any lock on the gate installed with pillars in the street as shown in blue colour at point A-B in site plan Ex.P2

and as shown in Ex.DW2/A connected to the back side of the house of the plaintiff and abutting to the house of the defendant. Whereas suit of the plaintiff for relief of mandatory injunction was dismissed. It was so done by the trial Court vide judgment and decree dated 29.11.2007.

Feeling dissatisfied with the said judgment and decree to the extent of denial of relief of mandatory injunction to him, the plaintiff had filed an appeal in the Court of District Judge, Ludhiana which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 20.12.2011 dismissed the same.

Still feeling aggrieved, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondents NO.1 and 3 have appeared before this Court through counsel.

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

The trial Court considering the facts and circumstances of the case and after analysing the evidence brought on file by the parties had come to the conclusion that plaintiff has been using the passage in dispute and he has got a right to use the same and defendants cannot stop him from using it, however observing that since the existence of pillar in the street and gate at the place shown in the site plans Ex.PW2/A and Ex.DW3/A does not cause any kind of prejudice to the plaintiff or diminishes the value of the property in any manner, the relief of

mandatory injunction seeking the removal of the pillar and gate was declined, whereas relief of permanent injunction was granted to the plaintiff restraining the defendants from interfering in the use of the passage by the plaintiff for egress and ingress to his house. The reasoning given by the trial Court in that regard is contained in para No.14 of the judgment, which for ready reference is reproduced as under:

14. After hearing the submissions of the counsels for the parties and after going through the entire oral as well as documentary evidence on the file produced by the respective parties on the file this Court is of the considered view that from the entire evidence of the parties as produced on the file one fact is clearly established on the file that the passage in dispute is in existence there which is connecting to the house of the defendant and back side of the house of the plaintiff and during the course of the arguments this fact has also become clear that the plaintiff has been using the said passage for the last more than forty years and if the plaintiff has been using the same for such a long period then his right of easement and right of prescription to use that passage certainly gets established on the said passage as per the law and now at this stage the defendant has got no authority to restrain or interfere in the usage of the passage by the plaintiff in any manner i.e. either by locking the gate or in any other manner. But at the same time the claim of the plaintiff to issue the decree for mandatory directing the defendant to remove the pillar as well as the gate from the said passage is totally unfounded because the plaintiff has miserably failed to prove on the

file that the passage in dispute is the public passage and it has been maintained by the gram panchayat of the village the measurement book produced as Ex.P1 by JE Gurcharan Singh on the file does not prove the fact that the passage in dispute was got built up by the gram panchayat. So far as the statements of the witnesses of both the parties are concerned both are invariable inter se and the witnesses of the both the parties have made a contradictory claim in their statements and the statements of the witnesses of both the parties do not render any kind of help to both the parties and are not of much reliance. As it is the settled principle of the procedural law that it is the plaintiff who has come to the court to seek the relief of mandatory injunction and for that purpose the plaintiff was required to make out a strong case for the relief but he has miserably failed to prove the case. Moreover in the considered opinion of the Court the existence of the pillar in the street and the existence of the gate at the place as shown in the site plans Ex.PW2/A and Ex.DW3/A does not cause any kind of prejudice to the plaintiff nor diminishes the value of the property in any manner. This fact has nowhere been established by the plaintiff that this is the only passage for the plaintiff to go to his house and more over the plaintiff has not denied the correctness of the site plan of the defendant. So having regard to the facts, circumstances and the evidence led on the file by the parties under these issues this Court is of the considered view that so far as the issue No.1 is concerned that does not stand established on the file and the same is hereby

decided against the plaintiff where as the issue No.2 relating to the relief of perpetual injunction is concerned as discussed above that the defendant is hereby restrained from interfering in the usage of the passage by the plaintiff in any manner even the defendant shall not put his lock on the door to stop the ingress and egress of the plaintiff from the said passage. Hence this issue is proved and is decided in favour of the plaintiff and against the defendant.

The defendants had not preferred any appeal against that judgment and decree. They had not filed any cross-objections even on getting notice of the appeal filed by the plaintiff against them before District Judge, Ludhiana. It means the judgment passed by the trial Court has become final and is binding upon them as far as relief of permanent injunction is concerned.

Now coming to the relief of mandatory injunction, in my considered view it was wrongly declined to the plaintiff by the Courts below, which was on account of non-application of a judicious mind. Once the Courts below had found existence of the passage in question leading to house of the plaintiff and that it is being used by him long, in the process restraining the defendants from obstructing him from using of that passage and the passage not being the private property of the defendants as pleaded by them in their written statement, the plaintiff had every right to use the passage and defendants could not possibly cause any obstruction therein by raising construction of any pillar or affixation of gate/door and the Courts below should have granted the relief of

mandatory injunction to the plaintiff and it was wrongly denied to him by giving unconvincing reasons. The pillars installed and gate/door affixed indeed amount to encroachment in the street in question and defendants are liable to remove the same. Therefore, the erroneous approach of the Courts below have resulted in miscarriage of justice and the said wrong needs to be undone. The Courts below failed to appreciate the facts and circumstances of the case in right perspective to analyze the evidence properly and apply the law correctly. Therefore, though the Courts below were fully justified in granting the relief of permanent injunction to the plaintiff but fell in error in declining the relief of mandatory injunction to him.

Therefore, the appeal stands allowed. The judgments and decrees passed by the Courts below are modified, suit of the plaintiff is decreed in totality. Resultantly, grant of decree for permanent injunction to the plaintiff by the Courts below is affirmed. In addition to that a decree for mandatory injunction directing the defendants to remove the pillar and door/gate installed by them in the street/passage in dispute detailed in the site plan attached with the plaint is passed in favour of plaintiff/appellant and against the defendants.

15.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No