

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

RSA-543-2013(O&M)

Date of decision:-9.4.2019

Dharam Singh and another

...Appellants

Versus

Joginder Singh

...Respondent

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

Present: Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the appellants.

None for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Joginder Singh resident of village Tanda Churrian, Tehsil Mukerian, District Hoshiarpur had brought a suit for grant of permanent injunction against defendants Dharam Singh and Jit Kaur of his village, seeking a restraint order against them from blocking the passage or causing any obstruction in the use and enjoyment of the passage being used

by the plaintiff as ingress and egress to his plot detailed in head-note of the plaint and shown as red colour in the site plan attached with the plaint situated in that very village, in the alternative craving for grant of mandatory injunction directing the defendants to demolish superstructure, if raised upon the passage during the pendency of the suit.

As per the case of the plaintiff, he was owner in possession of plot comprised in khasra No.98/2(0 K-10M) detailed in head-note of the plaint and depicted in the site plan attached therewith and a passage measuring one karam in breadth and nine karam in length led to that plot of plaintiff; that the passage had been so provided in view of order passed by the then District Judge, Hoshiarpur vide judgment dated 4.6.1993; that earlier to that the passage was being used by defendants for ingress and egress to the property of plaintiff; that though the property of defendants abuts the property of plaintiff but they have no right to interfere in the use of passage by the plaintiff; that the defendants were in wrong and illegal possession of the area comprising khasra No.98/1; that earlier also they had raised a dispute with the plaintiff and the plaintiff had filed a suit for possession, which was dismissed by Sub Judge, Dasuya vide judgment dated 24.3.1990; that on an appeal having been filed by plaintiff, the same was accepted by District Judge, Hoshiarpur and possession was delivered to the plaintiff through revenue authorities

on 8.8.1994; that the plaintiff had been using the passage without any disturbance since long; that of the late the defendants threatened to block the passage by placing some obstruction on part thereof, giving rise to a cause of action to the plaintiff to bring the suit.

On getting notice, the defendants appeared and filed written statement taking preliminary objections to the effect that the suit was not maintainable; that the plaintiff had not approached the Court with clean hands; that no cause of action arose to the plaintiff to bring the suit; that the suit was bad for non-joinder of the necessary parties. On merits, the defendants denied the existence of any passage at the spot as alleged by the plaintiff claiming that they had been in possession of the said site; that the possession of the said property was not delivered to the plaintiff; that the answering defendants had been in possession of the land comprising khasra No.98/1; that the construction at the place of site was already there before filing of the suit. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.
2. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP.

3. Whether the plaintiff has not come to the Court with clean hands? OPD.
4. Whether the suit is not maintainable? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Whether the plaintiff is estopped by his acts and conducts to file the present suit? OPD.
7. Whether the site plan filed by the plaintiff is incorrect? OPD.
8. Whether the suit of the plaintiff is bad for non-joinder of the necessary parties.
9. Relief.

Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1 besides examining Sh.Harbhajan Singh as PW2, Sh.Surinder Kumar as PW3 and Sh.Surjit Singh as PW4.

On the other hand, defendant No.1 – Dharam Singh appeared as DW1 and the defendants further examined Sh.Karan Singh as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiff and in favour of defendants, issues No.3 to 8(inadvertently mentioned as 2 to 8) were not pressed. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 14.1.2010.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Hoshiarpur, who vide judgment and decree dated 20.12.2012 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff with respect to the relief of permanent injunction restraining defendants/respondents from blocking any part of passage ABCD shown in red colour in the site plan Ex.PX and relief of mandatory injunction was granted directing the respondents to remove so much of the superstructure as was existing at that time in site ABCD, to be done within three months from the date of judgment passed by the First Appellate Court, failing which the appellant would get those superstructures removed through process of the Court.

Now it was turn of the defendants to feel dissatisfied and they had filed the present regular second appeal before this Court. Notice was issued to respondent, who was served and had put in appearance through counsel but subsequently counsel did not appear.

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

I find that the judgment and decree passed by the trial Court do not show proper appreciation of the legal and factual position, whereas judgment passed by learned District Judge,

Hoshiarpur is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law and there is no reason to upset the same. Learned District Judge, Hoshiarpur has based his observations on several grounds, which are as under:

- (i) that the site plan Ex.PX relied upon by the plaintiff was duly proved by statement of PW3 – Surinder Kumar, Draughtsman, but no counter site plan was proved in evidence by the defendants, therefore site plan Ex.PX was to be taken as correct, in terms of which no *pucca* construction was existing in site ABCD at the time of visit of PW3 to the spot, though two katcha small walls were there at points A and B;
- (ii) that in view of judgment and decree dated 4.6.1993 passed by District Judge, Hoshiarpur, the plaintiff was declared as owner of khasra No.98/2, which fact is corroborated by jamabandi for the year 2003-04 Ex.PG, thus is established that plaintiff/appellant Joginder Singh is owner of khasra No.98/2(0-10) but this area is of abadi. With no appeal having been filed against that judgment and decree, the same had become final between the parties;
- (iii) that the possession of Khasra No.98/2(0-10) was delivered to the appellant on 5.8.1994 as is evident from the copy of report roznamcha entry No.396 Ex.PY proved by Surjit Singh, Halqa Kanungo. In view of this judgment, the defendants were debarred from staking claim in Khasra No.98/2;
- (iv) that the suit property shown in yellow colour in Ex.PX is the same, which was the suit property forming subject matter of appeal, in

which judgment Ex.PZ was passed, thereby showing that street abutting house of Jit Kaur actually exists towards southern side of plot owned by appellant comprised in khasra No.98/2. There is no other approach to property comprised in khasra No.98/2 belonging to plaintiff except site in question i.e. ABCD shown as red colour in Ex.PX;

(v) that there was necessity for enjoying easement rights of passage for approach to property comprised in khasra No.98/2 and appellant has a right of easement of necessity.

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 District Judge, Hoshiarpur.

The appeal stands dismissed accordingly.

9.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No