

RSA-3152-2016 (O&M)

104

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

**RSA-3152-2016 (O&M)
Date of decision : 15.05.2019**

Palvinder Singh and another

... Appellants

Versus

Anita Jaspal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Dhandi, Advocate
for the appellants.

AMIT RAWAL, J

The appellants-defendant Nos.8 and 9, are in regular second appeal against the judgment and decree of the lower Appellate Court, whereby the suit of the respondent No.1/plaintiff, for mandatory injunction directing the defendants to remove the wall XY, XY1, X1 and Y1, from the path/passage shown as ABCD having a width of 18 ½, in the western portion/side of the plot carved out of the land comprised in Khasra No.146//10/1(3-0), 11/3 (3-0), as shown in the site plan, situated at Village Kansal, Tehsil Kharar, with consequential relief of permanent injunction against the defendants restraining from creating any further encroachment or raising any construction or alienation, by setting aside the sale deed dated 06.06.2005, executed by defendant No.1, in favour of the appellants, has been partly decreed.

It was alleged that Randhir Kumar Sood son of Krisha Chand

RSA-3152-2016 (O&M)

and Surinder Nindra son of Duni Chand, were the original owners of the suit property manuring 6 kanals. Plots were carved out in respect of the aforementioned land and agreement to sell dated 28.12.2004, was executed by the aforementioned persons, with respondent No.1/plaintiff, in respect of 6/120th share with the specific boundaries as shown 'EFGH' and the possession thereof was also delivered, along with execution of the Will and General Power of Attorney. The total length of the khasra number, in fact, was 82 ½ fts., whereas the length of the plot sold was only 64ft. One Sarwan Singh, exchanged his plot with Ravinder Jain and all the defendants in connivance with each other, constructed a wall marked by letters 'XY' in the passage 'ABCD', obstructed the passage to the plot of respondent No.1/plaintiff. The construction of the defendants was without authority and right. However, on 06.06.2005, defendant No.1 sold the plot measuring 14 marlas, to defendant Nos.8 and 9/appellants including the area of passage.

Defendant Nos.1, 2 and 7 were proceeded *ex parte*. However, defendant Nos.3 to 5 contested the suit and alleged that they were owner in possession of plot measuring 2 kanals 16 marlas, which was purchased from Sarwan Kumar, who sold the land on his behalf and being general power of attorney of Harjinder Singh son of Hardev Singh had given the *rasta* to the property of defendants, from Working Women Rural Welfare Society.

Defendant No.6 filed the separate written statement.

However, appellant/defendant No.8 and 9 filed the joint written statement and raised the various preliminary objections and on merits, it was stated that Randhir Sood and Surinder Nindra were not the original owners of the land measuring 6 kanals, nor any plots were carved out. Even the

RSA-3152-2016 (O&M)

agreement was denied, much less, site plan, Will as well as General Power of Attorney. Defendant Nos.8 and 9 were in established possession as owners and *bona fide* purchasers for a valuable consideration and there was no passage in existence.

The plaintiff examined two witnesses and brought on record numerous documents Ex.P1 to Ex.P8. On the other hand, the defendants examined one witness and tendered in evidence many documents Ex.D1 to Ex.D5.

The trial Court, on the basis of the evidence brought on record, dismissed the suit. However, the lower Appellate Court reversed the findings.

Mr. H.S. Dhandi, learned counsel appearing on behalf of the appellants submitted that judgment and decree of the lower Appellate Court is totally not in consonance with the site plan brought on record. In fact, the case of the appellants is that the appellants and respondent Nos.1, 4 to 6, had purchased their respective plots carved in land measuring 6 kanals, comprised in Khasra No.146/10/1 (3-0), 11/3 (3-0), adjoining to Working Women Rural Welfare Society, Block-C and other colony of golf links of Village Kansal. On the south-west side of land touches 24' main metaled road and on the west side touched 30' wide road and northern side revenue road. Rough site plan pared by the appellants enclosed along with the appeal for understanding the exact location. The aforementioned land was owned by 9 original owners, who sold the same to four shareholders/developers to the extent of 32/120th share to Randhir Sood, 32/120th share to Surinder Nindra Yog, 16/120th share to Harjinder Singh and 40/120th share to Sarwan Kumar, vide sale deed dated 15.11.2001. The

RSA-3152-2016 (O&M)

lower Appellate Court totally failed to consider that mere agreement to sell, Will and power of attorney as ascertained by respondent No.1, did not create any title, in the immovable property. Agreement, Ex.P2, did not mature into any sale deed, therefore, no sale deed was executed. The observation of the lower Appellate Court, regarding the alleged passage shown as ABCD in the site plan of respondent No.1 and raising of alleged wall 'XY' on behalf of the appellants, is neither here and there, for, respondent No.1, became the owner after the appellants. At the spot, there was no alleged passage on the plot and decree construed that the passage would pass through the plot of the appellants. The attention of this Court was drawn to the site plan Annexures A1 and A2, being part of the record of the Courts below.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Dhandi.

The apprehension of the appellants is totally misplaced. The lower Appellate Court, while decreeing the suit, has held as under:-

"The plaintiff has right to the passage in the western side of her plot to be connected with the passage on Northern side as shown in site plan Ex.DA and aks shajra Ex.P8/A. Defendant No.8 & 9, were directed to remove encroachment from the passage. Relief qua cancellation of sale deed dated 6.6.2005 was denied on the premise that the land was still joint and yet to be partitioned."

On perusal of the site plan, there is a road 24' ft., towards West, which is joining 11' ft, on the Northern, which goes to the plot of the appellants. The blockade as per site plan (Annexure A-1) was shown on the

RSA-3152-2016 (O&M)

24ft, wide passage shown as 'XY', 'X1' and 'Y1', in the site plan Annexure A1, thus, it cannot be construed that by virtue of a decree, respondent No.1/plaintiff would be passing through the plot of the appellants to her plot, which would be sandwiched between the appellants/defendant Nos.8 and 9 and on the other side, Vidya Jain etc., defendant Nos.3 to 5. Any hindrance created by the resident of the area would definitely give a cause to the affected parties. Defendant No.8, in the evidence, admitted that he was in excess possession of the share than sold to him by the seller. DW1 admitted that there was no passage shown in the revenue record other than the one in the north side. Defendant No.3 to 5, in their written statement, mentioned that they have been provided the way/passage to their plots from the Working Women Rural Welfare Society, but that leads to only their plots. Once the land is still joint and the same has not been partitioned, every co-sharer has a right to enjoy every parcel of the land. The lower Appellate Court, in my view, after appreciating the evidence, has rightly decreed the suit.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Dhandi, to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

15.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No