

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

**RSA No.1581 of 2017 (O&M)
Date of Decision.28.05.2019**

Om Parkash

...Appellant

Vs

Ganga Devi and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Rakhra, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.12218-C of 2018

Keeping in view the decision taken in the main appeal,
the application for impleading the legal representatives of deceased-
respondent No.1 Ganga Devi is dismissed.

RSA No.1581 of 2017 (O&M)

The present regular second appeal is directed against the
judgment and decree of the lower Appellate Court whereby the suit of
the appellant-plaintiff decreed by the trial Court, has been dismissed.

Om Parkash son of Ramanand filed a suit against the
defendant alleging to be exclusive owner of possession of plot having
open court yard on eastern side and thereafter house of defendant in
West, in North portion of plaintiff and in South pucca road of
Municipal Committee, Mohindergarh situated in Mohalla Karelia
Bazar, near Telephone Exchange, Town Mohindergarh, Tehsil and
District Mohindergarh and four feet vacant space on the Western side
to enjoy free flow of air It was alleged that plaintiff had raised the

construction as per the plan sanctioned by the Municipal Committee but the defendant wanted to construct the second floor by closing the ventilator opened by the plaintiff in his portion. Despite repeated requests, they did not stop, thus, cause of action arose to file the suit.

Defendants opposed the suit by raising numerous preliminary objections and stated that the disputed property was purchased by Ramanand son of Ramji Lal i.e. father and husband of defendant No.1 from the Rehabilitation Department vide sale certificate No.7797 dated 12.11.1957. After getting the site plan sanctioned, Ramanand raised construction thereon. Subsequently the property towards Eastern side owned by Janki Devi widow of Raghunath was purchased by the plaintiff and defendants No.2 and 3 jointly and construction was raised thereon. Plaintiff colluded with the officials of the Municipal Committee and got sanctioned the extension of site plan in the year 1973 asserting exclusive ownership over the disputed property. In fact, all the brothers were co-sharers.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether plaintiff is owner-in-possession of disputed property? OPP*
- 2. Whether defendants have no right to open widow/ventilators towards disputed property? OPP*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether this Court has no cause of action to file the suit? OPD*
- 5. Whether the suit is time barred? OPD*

6. Whether the plaintiff be estopped from filing the suit by his own act and conduct? OPOD

7. Whether the plaintiff has not come before the court with clean hands? OPD

8. Whether the defendants are entitled for special cost under Section 35A of CPC? OPD

9. Relief.”

Plaintiff in support of pleadings examined himself as PW2 and brought on record Ex.P1 to P7 i.e. sale deed, statement of parties, site plan and judgments and decrees etc. On the other hand, defendant No.2 examined himself as DW1 and brought on record Ex.D1 to D14 i.e. receipts, copy of site plan, copies of judgment and decree, statement of parties, copy of assessment register etc.

The trial Court on examination of the evidence found exclusive possession of plaintiff and while decreeing the suit restraint the defendants from opening their windows or ventilators towards the disputed property except in due course of law or await outcome of partition proceedings. However, in appeal, the lower Appellate Court reversed the finding of the trial Court.

Learned counsel for the appellant submitted that the lower Appellate Court has committed illegality and perversity in reversing the finding as the site plan depicted that *galis* are private and owned by the parties and since partition proceedings are pending, injunction was liable to be passed as it would unnecessarily create an ill feeling between the co-sharers. The sale deed Ex.D9 of 1977 did not give correct description of the co-sharers. Even there was

violation of easementary rights. Building inspector of the Municipal Committee was examined in respect of the sanctioned plan but the documentary evidence i.e. PW1/B has not been looked into correct perspective.

I am afraid aforementioned argument is not sustainable, as statement of PW1 Sunil Kumar, Building Inspector, Municipal Committee, Mohindergarh revealed that the site plan was not sanctioned as Ganga Devi wanted to raise construction on more area than what she has purchased, and also the road of government property was included in the area shown in the site plan. The fact of the matter is that existence of four feet wide space not denied by the defendant Diwakar in his statement. The previous proceedings regarding compromise would not help the plaintiff as it was not to disturb each other's possession. If partition proceedings were pending, the Court, could have, at the best confined the injunction qua forcible dispossession but not with regard to construction. The sale deed Ex.D9 dated 5.12.1977 disclosed on eastern side a *gali* and house of plaintiff and Ganga Devi to be exclusive owner in possession of the property. Between the house of Ganga Devi and Om Parkash, *gali* is reflected. Site plan sanctioned in 1973 Ex.P6 reveals that there is four feet wide space, thus, in these circumstances, the trial Court could not have restrained the defendants in the manner aforementioned. There was mis-direction and misreading of the evidence. The plaintiff cannot have exclusive right over the open space on the western side.

In view of such circumstances, I do not find any illegality

and perversity in the judgment and decree rendered by the lower Appellate Court being the last court of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 28, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No