

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

**RSA No.2522 of 2018 (O&M)
Date of Decision:11.02.2019**

Gurbachan Singh

.....Appellant

Versus

Jaswant Kaur and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.V.K.Sharma, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 27.01.2016, passed by the learned Civil Judge (Jrt Division), Sangrur, as well as judgment and decree dated 09.03.2018, passed by the learned Additional District Judge, Sangrur, whereby suit for permanent injunction filed by the plaintiff-appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that plaintiff-appellant filed a suit seeking permanent injunction restraining the defendants from demolishing and for restraining the defendants from forcibly and illegally opening the door from the plot of defendant no.1 towards the street/wall in question. The suit was filed by the plaintiff-Gurbachan Singh through his special power of attorney holder namely Satpal Singh son of Bhag Singh. It was pleaded that defendants were husband and wife. Plot in question was purchased by defendant no.1 from Pritam Singh. The wall in question was the boundary wall of Bishan Singh Nagar. It was stated that the plaintiff remained busy in discharge of his

duties as he was serving the Punjab Police. Taking advantage of his absence, the defendants made an attempt to demolish the wall on the northern side of his plot. Northern wall of the defendants plot was stated to be reflected in red colour in the site plan and the boundary wall of street no.2 of Bishan Singh Nagar is shown in green colour in the said site plan. Defendants, it was claimed tried to demolish the same and open the door of their plot towards the wall.

Matter was reported to the police by the appellant's wife, but no action was taken. Defendants, it was stated are influential persons having relations with the police authorities, due to which they sought to forcibly demolish the walls and open the doors of their plots towards the same. The entire planning of the colony of Bishan Singh Nagar was averred to be carried out by some Nirmal Singh Grewal (dealer). Plaintiff purchased the plot adjoining the boundary wall and constructed his house thereon. The planning of Baba Ajit Singh Nagar was drawn up separately. Separate passages were provided to different houses in the colony. Plaintiff's house was averred to be situated in Bishan Singh Nagar and that of the defendants within Baba Ajit Singh Nagar. Street in question, it was stated was given for the plots of Bishan Singh Nagar while preparing the planning of Bishan Singh Nagar. Defendants have no concern with the said street. As per revenue record, plot of defendant no.1 falls in khata no. 207/320, khasra no.133//3(8-0). Defendants were stated to have a separate passage having no concern with street no.2 of Bishan Singh Nagar. Hence the suit was filed.

Defendants resisted the suit. Written statement was filed. Various preliminary objections were taken in the written statement.

Averments on merits were controverted. It was admitted that the defendants being husband and wife were living together and the plaintiff was serving Punjab Police. Defendants claimed to have purchased their plot from Chattar Singh son of Pritam Singh vide registered sale deed dated 23.09.2009. As per the said plan attached with the sale deed, the street in dispute was very much provided to the plot of the defendants on the northern side. Furthermore, the street was stated to be a public street maintained by the Municipal Committee, Bhawanigarh. Streetlights were also installed by the Municipal Committee, Bhawanigarh. It was further stated that the Municipal Committee, Bhawanigarh, sanctioned site plan of the proposed residential house of the defendants after spot inspection by the Executive Officer, Municipal Committee, Bhawanigarh. Son of the defendants namely Harkirat Singh purchased the plot adjoining to the old residential house of the defendants, which abuts on the street in dispute. The said plot of Harkirat Singh was situated opposite to the house of the plaintiff. Therefore, the defendants in any case are entitled to use the street in dispute. It was denied that there was any entrance gate at the backside of the plot purchased by defendant no.1 from Chattar Singh. Main gate of the said plot was claimed to abut and open in the street in dispute which was being used for ingress and egress by the defendants since the date of the purchase of the plot from Chattar Singh. It was claimed that the plaintiff being an employee of Punjab Police was threatening the defendants with false implication in case, they did not desist from using the street in dispute. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties,

following issues were framed by the learned trial Court:-

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 plaintiff has got no cause of action and locus standi to file the present suit?OPD
4. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record dismissed the suit filed by the plaintiff while observing that the street in question was a metalled street maintained by the Nagar Council, Bhawanigarh. Streetlights were also installed by the Municipal Council, Bhawanigarh. Street in question being a public street, injunction as prayed for could not be granted to the plaintiff, who in any case had two gates to his property opening on different streets.

Appeal preferred by the appellant-plaintiff was dismissed by the learned Additional District Judge, Sangrur, vide impugned judgment and decree dated 09.03.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in dismissing the suit filed by the appellant-plaintiff. It is duly proved on record that the street in question was metalled by the appellant. Therefore, relief of permanent injunction restraining the defendants from demolishing the wall in question should

have been afforded. Learned counsel for the appellant relies upon the judgment of this Court in **The Municipal Corporation of Ludhiana Vs. Oswal Spinning and Weaving Mills Limited, (1991)2, ILR 486**, to submit that every street cannot be considered to be a 'public street'. There is no declaration of this street to be a public street. Defendants, it is submitted have no right to demolish the wall in question. It is thus prayed that this appeal be allowed and both the impugned judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Perusal of the file reveals that the plaintiff-appellant pleaded that he himself had metalled the street in question, but it is a matter of record that there is no evidence on record to substantiate this plea. Ex.D-5 and Ex.D-6 are the bills of the material used for metalling the street and Ex.D-15 is a copy of the entry in the stock register of the Municipal Council, Bhawanigarh, which reflects that the street was metalled and tube-lights installed by the Municipal Committee, Bhawanigarh. DW-4-Parmeshwar Yadav, Clerk, Nagar Council Bhawanigarh, duly proved Ex.D-15 which proves that the streetlights were installed by the Nagar Council, Bhwanigarh along with street in question. One of the said lights was also installed in front of the house of the plaintiff-appellant. Plaintiff while deposing as PW-6 has not deposed regarding the nature of the street in question. However, in his cross-examination, he admitted that the street in question is a public street, though stated to be meant for the use of residents of Bishan Singh

Nagar alone.

Learned Additional District Judge, Sangrur, culled out the following points for consideration:-

- “(a) Whether the street shown in site plan Ex.PW2/A attached with the plaint leading from Patiala-Sangrur main road up to the house of Harkirat Singh and Gurbachan Singh (plaintiff) is a public street or a private street?
- (b) Whether defendants can be restrained from using the aforesaid street in question?
- (c) Whether there exists any boundary wall of Bishan Singh Nagar on the northern side of plot of Jaswant Kaur (defendant) as shown in Green colour in the site plan Ex.PW2/A, constructed by the colonizer of Bishan Singh Nagar, if yes, whether defendants could be restrained to demolish the wall in question as shown in site plan attached with the plaint?
- (d) Whether the learned trial Court has not framed any proper issue in the present case?if so, its effect?
- (e) Whether the judgement of learned trial Court is in accordance with the legal and factual position involved in the present case?

After appreciating the report of PW-4, Sanjiv Garg, Advocate, Local Commissioner, as well as the sale deeds in favour of defendant no.1 and a minute scrutiny of the evidence on record, including admission of the plaintiff, learned Additional District Judge, Sangrur has rightly concluded that the street in question is a public street. While referring to Section 3 (13) of the Punjab Municipal Act, it has been held by this Court in The Municipal Corporation of Ludhiana's case (Supra) that before a street can be considered to be a 'public street', it must have been levelled, paved, metalled, channelled, sewerred, or repaired out of municipal or other public funds or it

must have been declared by the Committee or should have become, under the Act, a 'public street'.

In the present case, the street in question was proved to be metalled by the Municipal Committee, Bhawanigarh. Therefore, both the learned Courts below have rendered a correct, concurrent finding of fact. In such a situation, the defendants can obviously not be restrained from using the aforesaid street in question.

In respect to the plea of non-framing of proper issues, it is rightly observed by the learned Additional District Judge, Sangrur, that both the parties led evidence in support of their respective pleadings and went to trial with complete and full knowledge of the issues at hand. The trial remained pending for six years. No dispute was ever raised regarding non framing of any issue. Therefore, there is no question of trial being vitiated due to non-framing of any particular issue. Application under Order 41 Rule 25 CPC was rightly dismissed by the learned Additional District Judge, Sangrur. It is rightly held by both the learned Courts below that the plaintiff has failed to prove his case.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 27.01.2016 and

09.03.2018 passed by the learned Civil Judge (Jr. Division) Sangrur and learned Additional District Judge, Sangrur, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

11.02.2019

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.