IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2656 of 2018 (O&M)
Date of Decision : 05.11.2019

Jasbir

.....Appellant

Versus

Gram Panchayat Matanhail and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Neeraj Kumar, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 27.03.2015 and as even the appeal preferred against the said decree failed and was dismissed on 06.10.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a decree for mandatory injunction requiring the defendants to remove their rubbles from the gallery in dispute marked by letters ABEF, shown in red colour in the site plan, appended with the plaint and restore the same to its original position.

In brief, the case set out by him was that plaintiff happened to be the successor-in-interest of late Saroop Singh who had purchased the house from Jaggu @ Jag Ram, resident of village Matanhail, vide sale deed dated 16.12.1959. The said house was situated in *abadi deh* of the village and was bounded by the properties on all four sides as depicted in the plaint. There had been a mutual partition amongst the sons of late Saroop

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Singh and the disputed house was allotted to Zile Singh and Satbir Singh. Whereas Kapoor Singh was given another house located on the western passage of the house in dispute. Further, owing to partition between Satbir, who happened to be father of the plaintiff and Zile Singh, the eastern portion of the house was allotted to Satbir whereas Zile Singh was assigned western portion. However, a gallery measuring 4 feet 6 inches, which was part and parcel of the house purchased by late Saroop Singh on 16.12.1959, was kept joint. But as defendant No.1-Narinder who happened to be Sarpanch of the Gram Panchayat, Matanhail, threatened plaintiff that said gallery will be converted into a public passage and through which even the rainy as also the dirty water of the houses constructed on the western side would also pass, thus the suit.

In the written statement filed by the defendants the claim of the plaintiff was vehemently disputed. It was maintained that Jaggu @ Jag Ram son of Nihalu had no right to execute the sale deed dated 16.12.1959 and the boundaries of the suit property as depicted in paragraph 2 of the plaint were wrong and contrary to the actual position. The *gali* in dispute was never a part of the plaintiff's house and was rather constructed *pucca* by the previous panchayat on the request of the inhabitants of the village in terms of the District Plan Scheme.

Upon consideration of the mater in issue and the evidence on record both the Courts concurrently concluded that an analysis of the sale deed Ex.P1 did not reveal if any gallery as claimed by the plaintiff was in existence which was sold pursuant to the said sale deed. Although, to prove his claim plaintiff examined Kuldeep (PW1) and Jasbir (PW4) but they both

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conceded in their cross-examination that they had no clue as to the total area that was sold vide sale deed Ex.P1. Therefore, if the vendee himself was oblivious of the exact area of the land that was purchased vide sale deed Ex.P1, the version of the plaintiff that portion of the site in dispute was part and parcel of the property that was purchased vide said sale deed could not be countenanced. Even otherwise, nothing was brought on record to show that disputed site was a private and personal gallery or street of the plaintiff and his family. Rather from the evidence on record it appeared that said site was being used as public passage since long. Not just that it was made *pucca* several times from public funds by the gram panchayat. The photographs Mark-A to Mark-H revealed the existing position of the said street and also established that disputed passage leads to and connects with the main street. Not just that even Kuldeep Singh (PW1) and plaintiff himself (PW4) admitted in their statement that passage in dispute connects with the main street of the locality. It was not denied by these witnesses either that the disputed street was earlier constructed by the gram panchayat of the village. Thus, evidence on record proved that suit property was a street/public passage and was being used as such by the plaintiff and other inhabitants of the village. Hence, plaintiff could not seek injunction against defendants as regards the exclusive usage of the passage.

As regards placing of the rubbles etc. in the disputed street none other than PW1 and PW2 admitted in their cross-examination that plaintiff and his family members had once locked the street by putting rubbles and raising walls at the end of the disputed street. Thus, from the testimony of these witnesses as also the version of DW1 and DW2 it was

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evident that obstruction caused by plaintiff as regards use of the street was got cleared by the administration with the help of police force. I am also reminded to point out at this juncture that on May 07, 2018, counsel for the appellant was granted time to place on record certain photographs of the site in dispute but despite repeated opportunities the said order was not complied with. Rather, order dated April 29, 2019, records that as the photographs of the site in terms of the order dated May 07, 2018, were not placed on record, it appeared that appellant was not interested in placing those photographs on record.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. In the wake of the above, no ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

05.11.2019 **(ARUN PALLI)**
Manoj Bhutani **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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