

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

RSA No. 932 of 2014(O&M)

Date of decision: 8.1.2019

Ram Narayan

.....Appellant

VERSUS

Smt. Lajo and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kul Bhushan Sharma, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration, permanent injunction and consequential relief of possession in respect of property marked with letters CEDGHI i.e. dobari/joint passage measuring 7 feet wide and 39 feet 3 inches in length and plot with letters ADEF was dismissed by the trial Court vide judgment and decree dated 27.09.2011 and the appellant remained unsuccessful before the first Appellate Court that decided Civil Appeal No.21 of 2011 vide judgment and decree dated 03.10.2013.

In brief, case of the appellant/plaintiff is that he is the grandson of Mukandi Lal @ Bal Mukand and suit property is the ancestral property of Sh. Ramesh Chand son of Mukandi Lal @ Bal Mukand (since deceased), father of the appellant/plaintiff. It is averred that two shops along with staircase shown with letters ABCD in the site plan annexed with the plaint and open plot situated towards west of the shops, is situated

in the main bazaar, Faridabad. One shop of southern side bearing No.10/504 and new No.9/23 is under tenancy of Khichchu Mal. The shop and staircase is very old and built with lakhori bricks. Both the shops consist of two khans each and tenancy of both the shops is old. The open plot shown with letters ADEF is situated towards west of the shops. Ramesh Chand son of Mukandi Lal died on 13.01.2003 and succeeded by the plaintiff and defendants No.3 to 7. Plaintiff and defendants No.3 to 7 have become owners in possession of suit property and the property shown with letters FECHJKI was owned and possessed by the Mohammadans before partition of the country and they left India in the year 1947. The property vested in the custodian department who marked the said property as EP No.96. The said property was allotted/sold to Mohan Lal son of Khanda Ram and right to passage for property EP No.96 was given to Mohan Lal from joint passage shown with letters CDEFGI. Sh. Mohan Lal sold out western portion of property EP No.96 to the extent of 155 square yards to Vasudev vide registered sale deed dated 18.08.1961 and said Vasudev already owned his property towards west of property EP No.96. Mohan Lal sold the remaining portion of property to Nitya Nand @ Nand Lal son of Khanda Ram vide sale deed dated 05.06.1972. Sh. Nitya Nand died and succeeded by defendants No.1 and 2 being his widow and son, respectively.

The properties of the plaintiffs and defendants No.3 to 7 are ancestral properties. The shops shown with letters ABCD along with staircase were constructed more than 90 years ago. The staircase started from dobari/joint passage and goes to roof of shop of the plaintiff and defendants No.3 to 7 and their tenants of shops are using the said staircase

and go to roof of shops through dobari/joint passage. There is no other way to reach the open plot ADEF and use the staircase except the joint passage and accordingly plaintiff and defendants No.3 to 7 have acquired right of easement in the said passage. The defendants have no right, title or interest in the plot ADEF and they have no right to close the joint passage/dobari in question. Further averred that Sh. Nitya Nand @ Nand Lal and Mohan Lal threatened to close the dobari and interfere in the use of staircase by tenants of the shops which led to filing of civil suit No.188 of 1981 titled Lal Chand etc. Vs. Ramesh Chand etc., decreed by the trial Court but appeal preferred by the defendants was decided in their favour by holding that Lal Chand and Khichchu Mal have no locus standi to file the suit as they were not the tenants of joint passage, staircase and roof.

Respondents/defendants No.1 and 2 filed written statement and raised certain preliminary objections inter alia locus standi to file the suit; suit being without cause of action and is not properly valued for the purpose of Court fee and jurisdiction. It is submitted that the alleged passage in fact is a shop which is in exclusive possession of defendants No.1 and 2 in which a retail business of cut-piece of clothes and fabric is being carried on. The said portion is used as shop for the last more than 30 years. At the end of shop, residential house of the defendants exist. The said shop, house and the portion marked by letters IGEDC in the site plan annexed with plaint is in actual, physical and exclusive possession of defendants No.1 and 2 and predecessor of answering defendants namely Nitya Nand to the exclusion of plaintiff or any other person for the last more than 50 years. On merits, all the material averments of the plaint have been denied with regard to the appellant/plaintiff being the joint

owner or entitle to joint possession of alleged dobari/ joint passage or his ownership qua plot marked by letters ADEF. It is further averred that portion marked by letters ADEF is a room forming part of house of defendants No.1 and 2 and has been owned and possessed by Sh. Nitya Nand and their predecessor in interest for the last about 20 years. No such passage or staircase was in existence nor any such passage was ever used either by the plaintiff or defendants No.3 to 7 or by their predecessor in interest.

The controversy between the parties led to framing of issues by the trial Court on 28.04.2004, reproduced in para 11 of the judgment of trial Court. The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial Court negated claim of the appellant/plaintiff with regard to his co-ownership of plot ADEF and joint ownership of dobari/joint passage CEDFGHI and consequently suit filed by the appellant/plaintiff was dismissed. As has been noticed hereinbefore, the appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Faridabad and the same was dismissed by affirming findings of the trial Court without any variance.

On plain but careful reading of the judgments impugned makes it evident that the Courts have rejected plea of the appellant/plaintiff that the aforesaid two properties were previously owned by predecessor in interest of the plaintiff and defendants No.3 to 7 as the appellant failed to produce any document of title qua the properties in question. It has also been held by the Courts that in order to be successful, the

appellant/plaintiff has to stand on his own legs and he cannot derive any advantage from weakness of defence raised by the respondents/defendants.

The sole submission made by counsel for the appellant is that the Courts have failed to take a correct view of the matter on the basis of judgment and decree passed way back in the year 1947. Suit for partition filed by Roshan Lal and Bal Mukand sons of Sarna Mal against their third brother and mother namely Kundan Lal and Smt. Ashrfi wherein the property shown in plan D consisting of two shops, one half dahleez along with open site at the back of these shops, were allotted to Sh. Bal Mukand in view of the report submitted by the local commission Sh. Tripur Chand appointed on 21.12.1943 as such after passing of preliminary decree on 17.04.1943 by Sardar Dalip Singh, the then Senior Sub Judge. It is further argued that site plan D prepared by the said local commission was sought to be placed on record by filing CM No.13633 –C of 2017 but later an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for producing the same by way of additional evidence has been filed. It is argued that judgment and decree dated 21.02.1947 passed in suit titled Roshan Lal and another Vs. Kundan Lal and another and the site plan D are more than sufficient to establish plea of the plaintiff/appellant that he being successor in interest of Sh. Bal Mukand along with defendants No.3 to 7 are entitle to claim ownership of dobari/joint passage as well as open plot. According to counsel, as the property in question is the ancestral property of the appellant/plaintiff and he is not in possession of any other document except the documents pertaining to litigation that relates back to the year 1942, the Courts have seriously erred by holding that the appellant

has failed to establish his plea that he along with defendants No.3 to 7 is owner of the aforesaid two properties.

I have heard counsel for the appellant, perused the paper-book and records.

The appellant/plaintiff has staked his claim to plot with letters ADEF and joint ownership of dobari/joint passage with letters CEDFGHI by pleading that he along with defendants No.3 to 7 being successors in interest of Ramesh Chand son of Bal Mukand is owner of the said property. Indisputably, the appellant/plaintiff has not produced any document of title qua suit property in favour of Bal Mukand, Ramesh Chand or Sarna Mal, father of Sh. Bal Mukand @ Mukandi Lal. Neither the present respondents nor Sh. Mohan Lal who purportedly sold property bearing EP No.96 on the basis of allotment in his favour by the Custodian Department was a party to suit No.56/386 of 1942/1944. Perusal of the judgment dated 09.01.1947 passed by Sh. Chatan Dass Jain, Sub Judge Ist Class, Gurgaon would reveal that a preliminary decree was passed on 17.04.1943 whereby each of the plaintiff(s) and defendant(s) was therein held entitle to 1/4th share in property left by Sarna Mal and a preliminary decree for possession by partition was passed in their favour with further directions taken note of in the aforesaid judgment. The preliminary decree passed by Sh. Dalip Singh, Senior Sub Judge on 17.04.1943 has not been produced on record. There is nothing on record suggestive of the fact that the Court passed preliminary decree by deciding the question of title on the basis of documentary evidence qua the properties, subject matter of said litigation in which the defendants or their predecessors were admittedly not a party. In the given scenario, neither the judgment and decree dated

09.01.1947 is binding upon the respondents/defendants nor the said judgment and decree is sufficient to establish plea of the appellant that the suit property was owned by Sh. Ramesh Chand son of Bal Mukand and has been succeeded by the plaintiff along with defendants No.3 to 7 on death of Sh. Ramesh Chand. The Courts have rightly held that the appellant/plaintiff has failed to lead satisfactory much less cogent and clinching evidence to prove that he along with defendants No.3 to 7 is owner of the disputed properties and entitle to seek any relief. Perusal of the site plans D sought to be produced by way of additional evidence and Ex.P86 relied upon by the appellant in the present litigation makes it evident that in the site plan D, the staircase has been shown adjoining to dobari/passage but the same is not adjoining to the two shops in the eastern side depicted as shop No.1 and 2 in the site plan D (Annexure A-1) but the staircase is adjoining to the two shops in Ex.P86. This apart, neither any measurements nor area of shops and open space behind the shops has been described giving its precise length and width in site plan D. In this view of the matter, the appellant cannot connect the property depicted in site plan D with that shown in site plan Ex.P86. In view of the above, I do not find an error much less perversity in consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

JANUARY 8th, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no