

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3538 of 2018 (O&M)
Date of Decision : 06.11.2019

Manohar Singh (since deceased) through his LRs

.....Appellant(s)

Versus

Ved Parkash

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.R.S.Mamli, Advocate for the appellant(s).

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 08.07.2015 and as even the appeal preferred against the said decree failed and was dismissed on 04.09.2017, the appellants-defendants are 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 injunction restraining the defendants from encroaching upon the gali or raising any construction thereupon. Further, requiring the defendants to demolish the wall which had illegally been raised in the said gali and also restraining the defendants from doing any illegal activity.

In brief, the case set out by him was that plaintiff happened to be the owner in possession of a residential plot measuring 105 S.Y. situated in village Dhorka, District Gurgaon. He had purchased the said plot from

Ram Niwas vide sale deed dated 27.12.2010. There exists a gali in front of the plot of the plaintiff coming through the house of defendants. The said gali was being used by the plaintiff for outgress and ingress to his plot. Even otherwise, the plaintiff had acquired easementary rights as regards usage of the said gali. The defendants had already raised a wall in the said gali and is now trying to raise pillars with the intention to block the gali with concrete roof, thus the suit.

In the written statement filed by the defendants it was pleaded inter alia that house of the defendants was situated on main rasta and there was a pukhta gate for ingress and outgress to the house of the defendants. There was no gali on the spot through the house of the defendants. In fact, gate of the house of the defendants touched the main rasta, thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that it was not in dispute that late Manohar Lal happened to be the owner in possession of his house which, post his death was inherited by his heirs (defendants). Likewise, there was not any dispute either that plaintiff Ved Parkash had purchased a house of Ram Niwas and was in possession thereof. Therefore, the limited issue that required determination was as regards common passage/gali. The case of the plaintiff was that his house opened in west direction and there exists a common rasta/gali towards the west side which would lead and connect to Rasta Aam shown in red colour in the site plan Ex.PW5/A. Whereas, in defense, the defendants had denied the existence of any

common passage/gali towards the house of the defendants. Undoubtedly, the onus to prove that said gali exists at the spot was upon the plaintiff who appeared as his own witness (PW1) and testified existence of rasta/gali in his deposition. Ram Niwas (PW2) also corroborated the version of the plaintiff in his statement that he had sold his plot to the plaintiff with an existing rasta of 6 feet 3 inch on the western side. The sale deed dated 27.12.2010 Ex.PW4/A was duly proved and showed that the plot in question was purchased by plaintiff from Ram Niwas. A perusal of the sale deed Ex.PW4/A revealed and fortified the claim of the plaintiff that a rasta of 6 feet 3 inch indeed existed on the western side of the plot of the plaintiff. Agreement to sell (Ex.P6) in respect of house of Kamlesh Devi adjacent to the house of plaintiff also showed that a common passage/rasta in the southern direction. An analysis of both these documents proved the version of the plaintiff as also the position reflected in the site plan Ex.PW5/A. Defendant examined Sanjay (DW1) who conceded in his cross-examination that currently Ved Parkash and Kamlesh had no passage through their plots. Meaning thereby a passage did exist earlier but was now non existent. He also conceded that prior to the sale of plot even Ram Niwas would use the common passage/gali. Khushi Ram DW3 also admitted in his cross examination that there exists a gali near the house of Manohar for ingress and outgress since the time of his forefather. Further, Ram Niwas and Sumer used the said passage only to access their respective plots/houses. Similarly, Vikram DW5 admitted in his cross-examination that iron gate was installed only one and half years ago. Meaning thereby,

existence of a gali/rasta on the western side of the house of the plaintiff which goes in front of the house of Manohar and connects to rasta aam was admitted by DW1, DW2, DW3, and DW5. For, the witnesses examined by the defendants and the evidence on record proved that there did exist a rasta/gali, the only and the inevitable conclusion that could be reached: the plaintiff was entitled to the injunction prayed for.

On being pointedly asked, learned counsel for the appellants 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. 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.

06.11.2019

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

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No