

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

RSA No.39 of 2018(O&M)
Date of decision: 26.09.2019

Dheer Singh

... Appellant

Versus

Bashir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Virendra Rana, 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 07.10.2016. As even the appeal preferred against the said decree failed and was dismissed on 28.08.2017, 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 injunction. In brief, the case set out by him was that he was the owner in possession of a residential house depicted with letters **ABCDEFGHIJ**, as shown in the site plan appended with the plaint, situated within the *abadi* of village Bhadangpur, Tehsil Tauru, District Mewat. On eastern side of his house, there existed a mosque, depicted with letters **BCDEP**, and in front of the said mosque, as also the house of the plaintiff, there exist a *gali*, depicted with letters **PEFGLMNO**, shown in blue colour in the site plan. There also exists a *nali*, which was being used for outgress of dirty and rainy water of the house of the plaintiff and the mosque. The said *gali and nali* were under the control of the Gram

Panchayat and the defendants had no concern therewith. Further, a door of the house of the plaintiff, fixed between point E & F, also opened in 4 feet wide *gali*. For the defendants, who were the members of the Committee administering the mosque, intended to block the said *gali* and *nali* by raising construction on points P to O, thus, the suit.

In defence, the defendants pleaded, *inter alia*, that there was no *gali* in existence at the spot as claimed by the plaintiff. In fact, it was an open space owned by the mosque, which was donated by Ramjan son of Rehman, resident of Chandanhula Delhi, for construction of a mosque. For the mosque was constructed, the site in dispute was the property of the mosque. The plaintiff had forcibly opened a gate towards the said land. In fact, the main gate of the house of the plaintiff is towards southern side, which touches the main *rasta*. Therefore, 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 specific case set out by the plaintiff was that there exists a *gali* as also a *nali* duly depicted in the site plan Ex.PW1/A. However, Jugnu (PW2), examined by the plaintiff, as also Umed (PW3), conceded in their cross-examination that there actually existed no *gali* at the spot as claimed by the plaintiff. And, in fact, the suit property was a vacant plot earlier owned by Rishi Lal, which had been purchased by the defendants. Evidence on record showed that the main gate of the house of the plaintiff existed at point 'A' shown in the site plan Ex.PW1/A, adjacent to the *rasta* situated on the southern side of his house. The plea that Bashir (DW1) admitted in his statement that there existed a *rasta* towards northern site of the house of the plaintiff would not enure to the benefit of the plaintiff, for, an analysis of the testimony of Bashir showed that he

actually referred to *Aam Rasta*, situated on the northern side of the house of the plaintiff depicted in site plan Ex.PW1/A. Thus, his statement was not in reference to the alleged *gali*. No evidence was led either to show that alleged *gali* was indeed a public street. This was not the case of the plaintiff either that he had easmentary rights qua suit property. Ex facie, the onus to prove that there exist a *gali*, as also a *nali*, was upon the plaintiff, which he fails to discharge.

On being pointedly asked, learned counsel for the appellant failed to refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

26.09.2019

Rajan

Whether speaking / reasoned:

YES

Whether Reportable:

NO