

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

**RSA No.5006 of 2018 (O&M)
Date of Decision:15.01.2019**

Same Ram and another

.....Appellants

Versus

Gram Panchayat and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sandeep K. Sharma, Advocate
for the applicant-appellants.

LISA GILL, J.

Appellant-plaintiffs are aggrieved of judgment and decree dated 19.03.2018, passed by the learned Additional Civil Judge (Sr. Division), Meham, as well as judgment and decree dated 05.07.2018, passed by the learned Additional District Judge, Rohtak, whereby their suit for permanent injunction has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiffs filed the abovesaid suit for permanent injunction for restraining the defendants from demolishing any portion of the house or chabutra constructed over the plot no.153 of the house of the plaintiffs and in the alternate a decree for mandatory injunction directing the defendants to restore the dismantled portion in its actual position be also passed in favour of the plaintiffs in case the platform was removed during the pendency of the suit. It was pleaded that plaintiffs are owners in possession of 9/12 share of plot/house comprised in khewat no. 318/360/2, khasra no.153 (0-10) and 256 (1-0), total measuring 2 kanals situated in Village Gugaheri, Tehsil

Meham, District Rohtak. It was pleaded that the plaintiffs constructed their houses over the said plot 30 years ago by leaving a street i.e., 4 karam. It was further pleaded that defendants are very strong headed and cunning persons who threatened to demolish the platform (Chabutra) of the house of the plaintiffs without any just cause. Plaintiffs called upon the defendants not to interfere in the peaceful possession of the plaintiffs, but the defendants are adamant and did not pay any heed to the genuine request of the plaintiffs. Hence the suit was filed.

Defendants filed joint written statement while resisting the suit. Various preliminary objections were raised. Averments on merits were denied. It was stated that the plaintiffs have illegally encroached upon the land of Gram Panchayat by constructing a platform (Chabutra) in the street and eviction order *qua* the said platform has already been passed by Assistant Collector Ist Grade Meham on 31.03.2011 against the son of the plaintiff no.1. Appeal filed by the son of plaintiff no.1 was also dismissed by the Commissioner, Rohtak on 21.11.2012. It was further stated that during demarcation of street, it was found that the plaintiffs have illegally constructed platform (Chabutra) in the street and were in illegal and unauthorised possession of the street. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for?OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
3. Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD
4. Whether the jurisdiction of Civil Court is barred?OPD
5. Whether the suit of the plaintiffs is false and liable to be

dismissed?OPD
6. 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 concluded that the plaintiffs failed to prove their case. It is concluded that there is in-fact encroachment on the street maintained by the Gram Panchayat. Orders dated 31.03.2011 and 21.11.2012 passed by the Assistant Collector Ist Grade, Meham and Commissioner, Rohtak, respectively, revealed that eviction from the area encroached upon has been ordered on a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act preferred by one Rajbir.

Appeal preferred by the present appellant-plaintiffs was also dismissed by the learned Additional District Judge, Rohtak, vide judgment and decree dated 05.07.2018.

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

Learned counsel for the appellants vehemently argues that the construction i.e. the platform (Chabutra) in front of the house of the plaintiffs has been constructed/raised on land which belongs to the plaintiffs. The street in front of the plaintiffs land is 4 karam vide and not 5 karam as alleged by the defendants. Moreover, order of eviction has been passed against Manjeet @ Mandeep, who is the son of appellant no.1-Same Ram, therefore the same is not binding on the appellants. It is further submitted that application for leading additional evidence whereby the plaintiffs sought to produce Aksh Shajra has been wrongly dismissed by the learned First

Appellate Court. It is thus prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant-plaintiffs be decreed throughout.

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

Perusal of the photocopy of the record furnished in Court today by learned counsel, reveals that the appellant-plaintiffs have indeed encroached upon the land of the Gram Panchayat by constructing a platform (Chabutra) over one Karam in the street in front of their house. I have also perused order dated 31.03.2011 passed by the Assistant Collector Ist Grade, Meham (Ex.D-5). It is specifically mentioned therein that illegal encroachment has been carried out in the street. The spot was duly inspected by the Assistant Collector Ist Grade, Meham himself, in the presence of both the parties as well as the Patwari, Kanungo. It was found on the spot by the said officer that encroachment by way of platform was indeed existing in the street. It was thus ordered that the same be removed. As per order dated 21.12.2011, passed by the learned Commissioner, Rohtak (Ex.D-6) appeal filed by Manjeet @ Mandeep son of Same Ram, appellant no.1, was dismissed. Findings of both the learned Courts below are correct being based on proper appreciation of evidence on record.

Similarly, I do not find any merit in the argument raised by learned counsel for the appellants that application for leading additional evidence to produce the Aksh Shajra has been wrongly dismissed by the learned First Appellate Court. It is sought to be projected that as per the existing revenue record Ex.D-10 and Ex.D10/T (copy of Aksh Musavi), it is

not clear whether the width of the street is 4 karam or 5 karam at the spot. I have perused the said document produced by learned counsel for the appellants in Court today. It is clearly mentioned in the said exhibits that width of the street in front of the appellant's house is 5 karam. However, argument advanced by learned counsel for the appellants that said document may be incorrect, is indeed specious and not borne out from the record at all. Furthermore, learned First Appellate Court has rightly observed that there is nothing on record to show that despite due diligence, the document could not be produced on record by the appellants or that the same was not within their knowledge at the relevant time. Application has been rightly dismissed by the learned Additional District Judge, Rohtak.

There is further no merit in the contention that the order of eviction has been passed against the son of appellant no.1 and not the present appellants, therefore it is not binding upon them. No such plea had ever been raised at any stage by the appellants neither were orders dated 31.03.2011 and 21.11.2012 ever challenged by the appellants. There is neither any pleading or evidence on record to suggest that appellants and his son are not living together or that they have any strained relations or that the son of appellant no.1 is not occupying the said property. Acceptance of such an argument would necessarily lead to an anomalous situation where it would be possible for the plaintiffs to avoid orders dated 31.03.2011 and 21.12.2012 in this circuitous manner by seeking permanent injunction qua the platform constructed on a public street. This plea is clearly misplaced and untenable, hence rejected.

Learned counsel for the appellant-plaintiffs 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 19.03.2018 and 05.07.2018 passed by the learned Additional Civil Judge (Sr. Division) Meham and learned Additional District Judge, Rohtak, respectively, are upheld.

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

15.01.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.