

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5963-2018 (O&M)
DATE OF DECISION: 09.07.2019

KULWANT SINGH AND ANR.

...APPELLANTS..

VERSUS

MUNICIPAL COMMITTEE, KHARAR
AND ORS.

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ripudaman Singh Sidhu, Advocate,
for the appellants.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful, appellants-plaintiff after losing in two courts, have approached this Court by way of this Regular Second Appeal, challenging the judgment and decree dated 24.07.2018 of the appellate court, affirming the judgment and decree of the trial court dated 31.05.2016, whereby their suit for mandatory injunction, was dismissed.

Briefly, the appellants-plaintiff claiming themselves to be owner of 14 marlas of land comprising Khasra No.42//4/1/1(0-9), 5/1/1(0-5) (for short, "suit land") situated in Dashmesh Nagar Ward No.3, filed a suit for mandatory injunction against the respondents-defendant from creating any hindrance in their use and occupation and remove the obstruction, if any. Alternatively, if, the respondents-

defendant wanted to retain the suit land, they should compensate them at the prevalent rate. It was pleaded that during the pendency of earlier litigation, some portion of the suit land was purchased by one Nasib Singh, predecessor interest of respondents No.5 to 7 and he became co-sharer. He initiated partition proceedings qua the suit land. Consequently vide order dated 20.10.1989, the suit land was partitioned by Assistant Collector Ist Grade, Kharar, carving out certain roads, in which, water pipes were laid and electricity poles were erected. Parkash Kaur, one of the co-sharer preferred appeal against the said order of the Assistant Collector Ist Grade, which was accepted by the appellate authority vide order dated 29.05.1990, whereby, it was held that Parkash Kaur and Gurdev Kaur were owners in possession of the suit land. The said order has become final. The predecessor interest of respondents No.5 to 7 namely, Nasib Singh filed a suit against Gurdev Kaur and other co-sharer namely, Parkash Kaur and Shamsher Singh qua the suit land, which was decreed by the civil court vide judgment dated 02.08.2002. However, Parkash Kaur (since deceased) again laid challenged to the same by way of appeal, which was accepted vide judgment dated 22.07.2004. Further, Regular Second Appeal against the said judgment and decree of the appellate court was dismissed by this Court vide judgment dated 12.01.2011. Therefore, the judgment dated 22.07.2004 attained finality. During the pendency of above litigation, respondent No.1-Municipal Committee laid some sewer pipes and water pipes, drains, constructed roads in some portion

of the suit land and erected electricity poles, without acquisition of land, for which, the appellants-plaintiff were liable to be compensated.

Upon notice, the respondents contested the suit.

The trial court, after holding trial, negating the claim of the appellants-plaintiff dismissed their suit vide judgment and decree dated 31.05.2016.

Being aggrieved, appellants-plaintiff approached the first appellant court, but remained unsuccessful, as their appeal too was dismissed vide judgment and decree dated 28.07.2008.

Learned counsel for the appellants contends that ownership of the appellants-plaintiff over the suit land has not been denied by the respondents-defendant. Even, same was proved vide jamabandi for the year 1996-97 (Ex.P-7). Both the courts below have erred in dismissing the suit of the appellants-plaintiff, ignoring the fact that respondent No.1 could not have laid down any water or sewer pipes, drain, constructed any road and erected electricity poles without payment of compensation to them. He has relied upon judgment of this Court titled as ***"Vijay Kumar v. State of Haryana", 1190, 97 PLR 135.***

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds instant appeal completely devoid of any merit for the reasons to follow:-

1. No question of law much less substantial has been raised in this appeal. Therefore, the same is not maintainable.
2. In jamabandi for the 1996-1997 (Ex.P-7) relied

upon by learned counsel for the appellants-plaintiff, the suit land is shown as "gair mumkin rasta", which obviously vested with respondent No.1. The appellants-plaintiff must have obtained restraint order, when respondent No.1 was laying water and sewer pipes in the suit land for public purpose. The appellants-plaintiff have also not proved, in which year, the alleged water and sewer pipes were laid. Therefore, it is not ascertainable as to whether their suit filed in the year 2011 was within limitation. PW-1-appellant-Kulwant Singh in his cross-examination categorically admitted that the disputed land was being used by Nasib Singh predecessor-in-interest of respondents No.5 to 7. Harwinder Kaur from the side of respondents No.5 to 7 categorically deposed that her father had purchased the share of Mohinder Kaur in the year 1982 and constructed his house in the year 1985-86. The passage in dispute was being used by them for egress and ingress to their house, in which, respondent No.1-Municipal Committee laid water and sewer pipes etc. The appellants-plaintiff have very meager share in the suit land, inasmuch as, there are many co-sharers in the same, being successors or legal heirs of deceased-co-sharers. Therefore, they cannot be permitted to claim any compensation, more particularly, when they themselves permitted respondent No.1-Municipal Committee to lay down water and sewer pipes in the passage in dispute.

I have gone through the judgments of both the courts below and find no illegality and infirmity in the same.

In the given facts and circumstances, the authority relied upon

by learned counsel for the appellants, altogether on different issue and distinguishable on facts of the present case, is of no help to them.

In view of the discussion above, the instant appeal is dismissed.

09.07.2019

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(RAMENDRA JAIN)
JUDGE

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