

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

**RSA NO. 3936 OF 2014 (O&M)
DATE OF DECISION : 18.02.2020**

Karan Singh

...Appellant

versus

Ami Lal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J. P. Ahlawat, Advocate for
Mr. N. D. Achint, Advocate,
for the appellant.

Mr. Ashwani Gaur, Advocate,
for respondent No.1.

ARUN MONGA, J. (ORAL)

One of the co-defendants is in second appeal before this Court having suffered reversal of findings by the First Appellate Court, whereby the plaintiff's suit for permanent injunction seeking to restrain the defendants from encroaching the suit land was decreed in plaintiff's favour. A consequential decree of mandatory injunction was also granted against the defendants directing them to remove the waste material lying on the suit land. The trial Court had originally dismissed the suit against which the first appeal preferred by the plaintiff was accepted.

2. Factual matrix as noted by the First Appellate Court is that the plaintiff claiming himself to be owner in possession of

the suit land, filed a suit against the defendants whose residential plot/property is situated adjacent to the suit land on its western side. The plaintiff's claim is that the defendants had encroached upon the suit land forcibly and illegally and intended to usurp the same against his exclusive right and title. It was further alleged by the plaintiff that the defendants intended to raise construction on the suit land owned by the plaintiff.

3. In the joint written statement filed by the defendants, the allegations of plaintiff were denied. The defence taken by them was that the property of the defendants is situated on the western side of the suit land. Whatever construction was carried out, it was on the land of the defendants. As regards waste material, the same was also lying on the land of defendants. The defendants asserted that they never interfered in the peaceful possession of the plaintiff and whatever construction to be raised in future, the same would also be on their own property.

4. Based on the rival pleadings, following issues were framed :-

1) Whether the defendants have encroached upon any portion of the suit land belonging to the plaintiff?
OPP

2) Whether the plaintiff is entitled for permanent injunction on the grounds mentioned in the plaint ?
OPP

3) Whether the plaintiff has no locus standi to file the present suit ? OPD

- 4) Whether the suit is not maintainable ? OPD
- 5) Relief.

5. To prove the encroachment, the report of Local Commissioner (Ex-P-3) was relied upon, wherein it is stated that the defendants have encroached upon the land of plaintiff by opening the gate of their residential property towards the land of plaintiff. They have also put some waste material on the land of plaintiff. The defendants objected to the report of Local Commissioner on the ground that the Local Commissioner has not followed the instructions of Financial Commissioner. The objection of defendants is also that Local Commissioner did not try to find out the PUKHTA POINT to measure the land and he just interacted with the villagers and started measuring the land. Trial Court observed that since there is no dispute with regard to the boundaries of the parties' properties, whether the Local Commissioner correctly followed the guidelines of Financial Commissioner or not, was not relevant. Trial Court felt that the only dispute to be adjudicated was whether the plaintiff's land as mentioned in the report of the Local Commissioner, is covered under encroachment or not.

6. Trial Court observed that encroachment is a term which implies "advance beyond proper limits". In this context, it relied upon a ***Smt. Anguri and ors. V. Jiwan Dass and Anr.***

Civil Appeal No. 532 of 1986 decided on 30.08.1988, wherein it was held by Hon'ble the Supreme Court that *"if a party opens a door/ window towards the side of the other party, then the other party has a remedy to create a wall just in front of that window on his own land. Mere opening a window or a door does not amount to encroachment"*.

7. In the aforesaid premise, the trial Court dismissed the suit observing that in the present case also, the contention of the plaintiff is that the defendant has opened a door on the side of the plaintiff's land and the report of Local Commissioner also says the same thing. So, it is clear that opening a door does not amount to encroachment.

8. In the appeal filed by the plaintiff, the Appellate Court, *inter-alia*, observed that an application was moved by the plaintiff seeking amendment in the plaint whereby the plaintiff sought the relief of possession of the encroached portion, as according to him, the defendants succeeded to encroach upon the same by stacking their building material and other items and they were tethering their cattle on the suit land. The said move of the plaintiff failed as trial court vide order dated 31.10.2012 dismissed the said application. The plaintiff sought the second relief regarding restoration of possession to him, in case if during the pendency of the suit, the encroachment is made by the defendants.

9. First Appellate Court observed that the trial Court

while dealing with the report of Local Commissioner Exhibit P-3, misdirected itself to state that Local Commissioner could not have said that the waste material lying on the suit land actually belongs to defendants. The trial court thus wrongly discarded the aforesaid part of the statement of Local Commissioner.

10. The First Appellate Court found that there was apparent mis-appreciation of the report of Local Commissioner by the trial Court in context of the factual scenario involved in the case. The Local Commissioner DW-2 Sushil Kumar is a public servant and being absolutely impartial and uninterested witness, therefore, there is no reason to disbelieve him. The factum of opening of the door of the property of the defendants towards the suit land is to be appreciated in the back drop of strong allegations levelled by the plaintiff that defendants had thrown the garbage and they were tethering their cattle in the suit land. It was categorically stated by the defendants that the property of the defendants is situated towards the western side and their construction exists in their own land since last many years. From the conduct of the defendants, it is well proved that the defendants have raised the construction on their own land, but the door of their house indeed opens towards the suit land. The admission of the defendants in this regard cannot be blown out of proportion and is not sufficient to wipe out the entire case of the plaintiff, which otherwise stands duly proved.

11. First Appellate Court further observed that **Anguri**

and others' case (supra), was wrongly applied by the trial court on the touchstone of the facts and circumstances of the case. The crux of said authority is that where a neighbour opens a window in his own property, which is towards the property of other person, then the dominant owner using the easement right by opening the window has no right to demolish the wall, if the person in whose land the window is opened, chooses to raise the construction of wall to block the window. In the present case, it is not the case of the opening of window towards the land of the plaintiff, rather it is a case of palpable encroachment on the land of the plaintiff by the defendants by way of opening their door and further the defendants encroached upon the land of the plaintiff by throwing garbage in the shape of cow dung, etc. and they have been tethering their cattle. Hence, the findings of trial court were set aside and appeal was accepted. The suit of the plaintiff decreed whereby, by means of decree for mandatory injunction the defendants no. 1 and 2 directed to remove the waste material lying in the land of the plaintiff. Further a decree for permanent injunction passed whereby defendants are permanently restrained from interfering into the peaceful possession of the plaintiff of the suit land by dispossessing him from the suit land.

12. I have heard learned counsels for the parties and have perused both the judgments and decrees passed by the Courts below viz.a.viz grounds of appeal raised before this Court.

13. Having given my thoughtful consideration, I am of the view that the trial Court wrongly dismissed the suit filed by the plaintiff and also misinterpreted the judgment of Hon'ble the Supreme Court in ***Angoori's case (supra)***, *ibid*.

14. The First Appellate Court rightly observed that the defendants having opened the door of their house on the side of plaintiff were wrongfully having access on the land of plaintiff. The defendants could not have encroached the adjacent suit land of the plaintiff by having unhindered access through a side door and on the preponderance of the evidence, the garbage in the shape of cow dung etc created encroachment since the defendants had been tethering their cattle on the suit land. Accordingly it rightfully reversed the findings of the trial Court which had erred in disbelieving the well reasonsed report of Local Commissioner who was appointed by the Court itself to seek assistance qua the encroachment.

15. Further more, the defendants have themselves admitted that they had opened a door of their house towards the suit land. Therefore, it flies on their face to contend that they do not intend to have any easementary rights by encroachment on the suit land. Once it is established that door of defendant's house opens on the side of the suit land, it is but natural for access to their house, they would have to necessarily pass through the suit land of the plaintiff. The First Appellate Court rightly granted permanent injunction restraining the defendants

from interfering into the possession of plaintiff on the suit land and further directing the defendants by way of mandatory injunction to remove the garbage created/kept there by tethering of cattle.

16. There seems no perversity or illegality in the finding of facts returned by the First Appellate Court by proper appreciation of evidence.

17. Furthermore, neither any question of law much less substantial question of law, which is sine qua non for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

18. In view of the reasons contained aforesaid and also having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised, warranting interference of this Court in present second appeal. In the premise, the instant second appeal is dismissed.

19. Pending application, if any, shall also stand disposed of.

20. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 20, 2020

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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |