

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

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**RSA No. 4720 of 2018 (O & M)
Date of decision : 17.1.2020**

Kirpal Singh and another

.....Appellants

Vs.

Amrik Singh

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. M.S. Sachdev, Advocate, for the appellants

Rajbir Sehrawat, J. (Oral)

This is the defendants' second appeal challenging the concurrent findings recorded by both the Courts below in a suit for prohibitory and mandatory injunction filed by the plaintiff, seeking to restrain the defendants from interfering with the exclusive usage of the street by the plaintiff and for closing the door of the house of the defendants, which opened in the street.

The facts in brief are that the suit in question was filed by the plaintiff-Amrik Singh; claiming that he and the defendant No.1 are the real brothers and defendant No.2 is the son of defendant No.1. The Rehabilitation Department had allotted 2 kanal 18 marlas of land to the father of the plaintiff and defendant No.1 in village Malikpur, within the *lal laqir* in the year 1959. After the death of their father, the land in question was inherited by the plaintiff and defendant No.1 alongwith their other brothers namely; Kulwant Singh, Kartar Singh and Balwant Singh. In the year 1971, the said property was partitioned amongst the brothers and since then the parties are in possession of

their respective shares, as shown in the site plan attached with the plaint. All the brothers have raised construction of their houses in their respective shares and started residing there. However, while dividing the said property, it was divided in such a manner that the property in which the plaintiff was given his share, was in the centre, whereas, all the other four brothers had got the surrounding portions, which abutted to other passages or the roads on the other sides. Therefore, as a part of the partition, to provide passage to the share of the plaintiff, a street measuring 7 feet was left exclusively for use by the plaintiff. At that time, it was also decided that except the plaintiff, no other brother would make any other opening on the said street. However, now the defendants started raising wall of height of about 5 feet on the land of the said street, narrowing the width of the street by 2 feet, as shown in the site plan. In their endeavor, the defendants constructed part of the wall in the said street despite the fact that the defendants had no right or interest in the said street. The said street is purely a private street meant for the plaintiff. However, the defendants opened their gate in the said street and started interfering in the free ingress and egress of the plaintiff; to and from his house.

The defendants filed written statement, in which the facts regarding ownership of the joint property and partition were admitted. It was also admitted that during partition, the plaintiff was given the property in the centre and all other brothers had the independent opening of their entrances on the other sides. However, it was asserted that the street in question was left for usage by all the brothers. There is no encroachment upon the same. The Gram Panchayat had made the street *pucca*. Even the drainage system through pipes has been laid down in the street. The pipes of the water supply has also been

laid in the street. Therefore, now it is a public street and the defendants have every right to use the street and open their gates on the same.

In his evidence, the plaintiff himself has stepped into the witness box. On the other hand, Dalip Singh stepped into the witness box and also examined ex-sarpanch in support of his averments.

After appreciating the evidence of the respective parties, the trial Court arrived at a conclusion that the case of the plaintiff stands proved. The Court recorded a finding that even as per the admission of the defendants, the street was left for usage by the plaintiff because his house was situated at the centre of the property which was partitioned. The trial Court came to this conclusion by finding substance in the argument of the plaintiff that all the other brothers had got the land at different locations; which had opening of their gates on the streets on the other sides. Accordingly, the trial Court held the street to be private street meant for the plaintiff and decreed the suit. Feeling aggrieved against the same, the defendants/appellants preferred appeal before the District Judge, Kapurthala. However, the lower Appellate Court also dismissed the appeal filed by the defendants.

While arguing the case, learned counsel for the appellants has submitted that even though the street was left during the partition by all the brothers for the use of the plaintiff, however, since now it is being used by the general public, therefore, it has become a public street. It is further submitted that this aspect stands fortified by the fact that even the Gram Panchayat has made the street *pucca* and even the drainage and water supply pipes have been laid along side the street. It is further contended that since the street is a public street, therefore, the suit of the plaintiff for injunction itself is not maintainable.

The question of title of the street being a village common land; is to be decided by the Assistant Collector under the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act"). Learned counsel has relied upon the judgments of this Court rendered in **'Raj Kumar Raghav and another v. Lakhwinder Singh and another, 2019 (1) Law Herald 200', 'Surain Singh v. Gram Panchayat, Raipur Piubuxwala, 2000 (4) RCR (Civil) 86'** and **'Jhalla Ram v. Gram Sabha, Kosli and another, 1982 PLR 77'**. Still further, it is submitted that even if prohibitory injunction is to be issued, this being a street, the mandatory injunction, to close the gate could not be issued by the Courts below.

Having heard learned counsel for the appellants and having perused the file, this Court does not find any substance in the arguments of learned counsel for the appellants/defendants.

Undisputedly, earlier this street formed part of the private property of the family of the plaintiff and defendants. Therefore, by any means, it is not the common property of the village as such. However, the fact remains that earlier the property including land of street was one chunk of land. The said property was partitioned amongst the brothers i.e. the plaintiff and the defendants, along with other brothers. All the other brothers had been given the preferential locations during the partition by giving them the land on the peripheral areas, in such a manner that all their houses abutted to the streets and their gates could have opened on public streets. Only the plaintiff was sandwiched in the centre of the property. Therefore, as a term of the partition, a street of 7 feet was left for the ingress and egress of the plaintiff from the nearest public street to his house. Therefore, on the face of it, this is a street

left and meant for the plaintiff only. Although, learned counsel for the appellants has submitted that this was a street left for joint usage, however, he has not been able to point out even now if the plaintiff was given some extra land for being sandwiched i.e. for giving non-preferential portion of land during the partition. If even at non-preferential location the plaintiff was also getting the same area in partition as the defendants and other brothers were getting, then it is quite natural that the street, which was being left, was left for use only by the plaintiff. This Court finds the conclusion of the Courts below; to the effect that had this street also been common; then the plaintiff would not have accepted the totally dis-advantageous piece of land during the partition, to be perfectly valid. Had this been a common street, there was nothing which would have made the plaintiff to accept the arrangement in which he is being sandwiched from all the sides and put to a totally dis-advantageous situation. Hence, this Court finds a substance in the plea raised by the plaintiff that the street was meant and was left during the partition only for the purpose of usage by the plaintiff. Hence, it is to be held that it was a private street of the plaintiff. Both the Courts below have not committed any illegality or irregularity in recording this finding.

Although, learned counsel for the appellants has relied upon the above mentioned judgments to contend that the street is a public street, however, this Court does not find any substance in the argument. The judgments relied upon by learned counsel for the appellants are not even remotely applicable to the facts of the present case. Once it has come on record and not even denied by the defendants that the street was left out of the joint property of the family, no amount of public usage can convert the street into a

public street. It may be that due to non objection, the certain public usage may have happened over the land of street, however, that would not convert the street itself into a public street. Merely, because the drainage and water supply pipes have been laid along side the street, would not convert it into public street because house of the plaintiff is also situated at the end of the street. The common facility of drainage and water supply has to reach to the house of the plaintiff as well. For this purpose, the pipes have to be laid along side this street only. Hence, this fact is totally irrelevant so far as the character of the street as the private and public street is concerned.

Although, learned counsel for the appellants has also submitted that moment the question is raised that a particular street is a public street, then the civil Court has no jurisdiction to entertain the suit and hence, the suit has to be dismissed as not maintainable. However, this Court does not find substance even in this argument of learned counsel for the appellants. Firstly; the Act, which has been relied upon by learned counsel for the appellants, as applicable in Punjab, does not provide any remedy for a public person to approach directly to Assistant Collector for seeking a declaration in his favour qua the title over the suit property. As per the provisions of the Act, as applicable in the State of Punjab, only the Gram Panchayat has the authority to file an application under the Act, for ejectment of a person from public street or common land. In those proceedings, if any question of title is raised, of course the said title has to be adjudicated upon by the Assistant Collector. Beyond that, the provisions of the Act does not create any embargo upon the provisions of Section 9 CPC, which provides that every suit is maintainable except when specifically prohibited by law. In the present case, the plaintiff had filed a suit

based upon his title. The private title over the land when the same was joint has even not disputed by the defendants. They have taken a stand that it is a joint land. Even if this came to be the joint land of the plaintiff and defendants, that excludes the character of the land as public street. Needless to say; that the Courts below have already recorded findings qua the severance of the jointness of the title; leading to the street being declared as private street.

No other argument was advanced.

Hence, this Court does not find any illegality or irregularity in the judgments/decrees passed by the Courts below.

In view of the above, finding no merit in the present appeal, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

17.1.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No