

125 (2 cases)

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

RSA-525-2021 (O&M)
Date of decision: 20.09.2021

Kashmir Singh

...Appellant

Versus

Gurdeep Singh and another

...Respondents

RSA No.664-2021 (O&M)

Kashmir Singh

...Appellant

Versus

Gurdeep Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Kumar Kansal, Advocate,
for the appellant.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Vide this common order, I intend to dispose of the
aforementioned two appeals, as common question of law and facts are
involved therein. For brevity, facts are being taken from RSA No.525 of
2021.

For convenience, parties herein are addressed as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, the plaintiff is in second appeal before this Court assailing the trial
Court judgment and decree dated 01.10.2014, as upheld by the learned First
Appellate Court vide its judgment and decree dated 26.11.2019.

3. Briefly stated, facts as noticed by Courts below are that plaintiff
pleaded that he is owner in possession over portion of immovable property
shown with blue colour in the site plan as ABCDEFGHIJKLMN. Plaintiff

claims that he had raised construction of a godown and has a veranda in the portion aforesaid but the defendants had installed two windows shown with red colour in the site plan in the wall mark DE towards the side of plaintiff for which directions against defendants was sought to close and remove the windows as they had no right to open the door, window, *mories*, *patnalas* etc. in the wall marked DE towards the property of plaintiff. It is alleged that by their doing so, plaintiff is suffering great loss and special injury which cannot be compensated by costs. Hence, defendants be restrained from opening any further doors, window, *mori*, *patnalas* in the wall DE and a mandatory injunction be issued directing the defendants to close the already installed window. Defendants denied the plaint allegations and set up counter claim requiring the removal of encroachment made by the plaintiff.

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

1. *Whether the plaintiff is entitled for permanent injunction as well as mandatory injunction against the defendants as prayed for? OPP*

1A. *Whether the defendants are entitled to the relief of counter claim as prayed for? OPD*

2. *Whether the suit is not maintainable in the present form? OPD*

3. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*

4. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*

5. *Whether the suit of the plaintiff has not come in court with clean hands? OPD*

6. *Relief.*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, trial Court decided issues No.1 in favour of the defendants and issues No.1A to 5 against the defendants.

7. First Appellate Court dismissed the appeal, whereas the cross-objections/cross-appeal filed by the defendants were allowed. As a necessary corollary, the counter claim whereby the defendants had prayed for decree of mandatory injunction directing the plaintiff to remove the illegal encroachment in the shape of temporary godown building from *Shamlat* land including public street shown in yellow colour in site plan Ex.D2, was ordered to be decreed. Hence Regular Second Appeal before this Court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant of First Appellate Court judgment, with which, *inter alia*, I am in agreement is as below:

“25. Now, let us discuss the evidence that has been adduced in file from the point of view of cross-objectionist. Plaintiff Kashmir has stated that Singara was having eight children, five daughters and three sons. In these circumstances, it was incumbent upon the plaintiff to show as to how and under what circumstances one of the sons of Singara Singh namely Harbhajan Singh was competent to dispose of his entire property. The plaintiff has shown ignorance about Ex.D-1 resolution passed by the Gram Panchayat Kharkara. He has also shown ignorance whether Ex.D-1 bears signatures of his father Fauja Singh and Kuldeep Singh his real brother but one fact is clear that signatures of Kuldeep Singh are lying appended on Ex.D-1 on second page at the footnote. The plaintiff is ignorant about the disputed street also as at page 5

of his cross-examination he has stated that he does not know that from main street tween the houses of Gurdeep Singh and Singara Singh any street was left out for the use. PW-3 Scribe of Ex. P-2 has also admitted the plot purchased by the plaintiff on the eastern side is a street and after that street is situated house of defendant Gurdeep. One more thing I would like to point out that the plaintiff is coming to the court with suppression of facts. He has not come to the court with clean hands because he has stated that his area is 1 kanal 10 marla on which he is claiming ownership but document Ex.P-2 shows that he allegedly purchased just on 183 sq. yards of land.

26. Moreover, there is no entry of Ex.P-1 document in the register of deed writer as has been admitted by PW-3 Satish Kumar. It is not uncommon in the villages that when such type of agreement are written then vendor mentions the larger area to be transferred in the name of purchaser and this appears to be same case. Conversely, the defendant has examined Sukha Singh DW-3. Though this DW is brother of defendant but on Ex.D-1 his signatures are appended at page 2 and he has clearly stated in his deposition Ex.DW-3/A that brother of plaintiff Kuldeep Singh and his father Fauja appended their signatures at document Ex. D-1 resolution passed by gram Panchayat, Kharkara. No evidence has been adduced by the plaintiff to the contrary to show to the court that signatures of Kuldeep and Fauja are not available in the file. Authenticity of document Ex.D-1 cannot be doubted because original of this record has been got produced by the defendants through Satish Kumar, Panchayat Secretary who has deposed that Ex.D-1 is the correct copy of the resolution of Panchayat. In the said document Ex.D-1 the reference of second street of defendant Gurdeep and Singara Singh has been given wherein it is mentioned that 12' street has been left for use and nobody would interfere or cause obstruction in such use of street and this 12' street further touches to the main street. Now, the question arises whether Gram Panchayat is competent to make

such like order. For this I would like to refer section 21 (5) of the Haryana Panchayati Raj Act, 1994 which is as under:-

“Removal of encroachments on public place”.

Further, this power can also be exercised in the same section sub section xxv. The power is inconsonance with section 24 (a) (i). The words public place and public street have been defined in the Act as under:-

(iii) Public Street means a pathway, road, street, bridge-lane, square, court, alley or passage in a village, which the public has a right to use, and includes the drains or gutters on either side and the land up to the defined boundary of any abutting property, notwithstanding any projection over such land of any verandah or other superstructure.

Therefore, said resolution Ex.D-1 is in consonance with provision of Haryana Panchayati Raj Act also. Thus, plaintiff was having no case from any angle and the suit has been rightly dismissed by learned trial court except to the extent that finding regarding non existence of street between the houses of defendants and the land of plaintiff being erroneous, result of misleading the evidence, not taking into consideration the document produced in file and is thus set aside.”

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

10. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the

impugned judgments and decrees passed by learned Courts below are upheld.

- 12. Pending application/s, if any, shall also stand disposed of.
- 13. No order as to costs.
- 14. A photocopy of this order be placed on the connected case file.

20.09.2021
vandana

(ARUN MONGA)
JUDGE

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