

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

RSA-728-2022

Date of decision: 01.04.2022

Gram Panchayat, Village Raipur Khurd

.... Appellant

versus

Mangal Singh and another

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Y.S.Dhaliwal, Advocate
for the appellant.

Manjari Nehru Kaul, J.(Oral)

Instant appeal arises out of the suit for possession, which was filed by the respondents-plaintiffs- Mangal Singh and Gurbachan Singh against the appellant-defendant-Gram Panchayat, village Raipur Khurd District SAS Nagar, Mohali with further prayer for a direction to the appellant-defendant to remove its material from the site in question, and for permanent injunction for restraining the appellant-defendant from paving the site in question with bricks.

For the sake of convenience, the parties to the lis hereinafter would be referred to by their original position in the suit.

2. A perusal of the impugned judgments and decree reveal that during the course of trial, both the parties had requested and agreed to the appointment of a local commissioner for the peaceful settlement of their dispute. The local commissioner, who was appointed by the Court was the Patwari, Halqa Mauli Biadwan, Mohali, who then visited the spot in question, carried out the

demarcation and submitted his report to the trial Court. It also stands reflected in the judgment of the Lower Appellate Court that the plaintiffs had constructed a wall on the northern side of their bara (hereinafter referred to as 'property') and there was also a wall on the eastern side of the property. It was also not denied that there was also a street on the southern side of the property. Plaintiff-Mangal Singh while appearing as PW-1 reiterated the averments made in the plaint. During his cross-examination, he deposed that there was no curve in the street adjoining the property earlier, but admitted that now there was a curve reflected in the street as per the site plan prepared by the local commissioner. Further, Sarpanch Mohan Singh, who appeared as DW-1 admitted that site plan, Ex.D-1, which had been prepared by DW-5 Gian Chand, Architect/ draftsman and produced during the trial by him, did not show any curve in the street adjoining the property of the plaintiffs. He also admitted that in the report submitted by the local commissioner, however, a curve was shown on the said street. From the above, both the Courts below concluded that in the paving of the street, the defendant had encroached upon the property belonging to the plaintiffs.

3. Learned counsel for the appellant vehemently argued that the plaintiffs were creating hurdles and not letting them carry out work for the welfare of the village. He further submitted that the plaintiffs had been obstructing the defendant from reconstructing a street which adjoined the property of the former, as a result of which, they had to even seek police protection. Learned counsel still further submitted that no doubt there was a wall on the northern side as well as on the eastern side of the property but the

site plan (Site C DD1 in red) annexed with the plaint by the plaintiffs to show that it was part of their property, was incorrect. Learned counsel submitted that the street adjoining the property of the plaintiffs had been in existence since time immemorial and the defendants had all along been in possession of the same. He submitted that the site plan, which had been annexed by them in their written statement i.e. JKLM was the correct one, which left no manner of doubt that the plaintiffs were wrongly claiming ownership of a portion of the street. Learned counsel further submitted that the jurisdiction of a civil court over the matter was specifically barred under the Punjab Village Common Land Act as the suit land vested in the Gram Panchayat, however, the Courts below had erroneously gone ahead in deciding the suit on merits.

4. I have heard learned counsel and perused the relevant material on record.

5. The arguments raised by the defendant that a Civil Court had no jurisdiction over the matter because the land in question was a street belonging to the Gram Panchayat is untenable for the reasons that no material whatsoever was produced during trial by the appellants to even prima facie show that the 'disputed portion' was in fact ever part of the street or the appellant ever had any right over the same. Therefore, only on the basis of their bald assertions, the contentions qua the bar on the jurisdiction of the Civil Courts cannot be accepted. The Courts, no doubt, are the guardian of public property. However, at the same time, a Court cannot be expected to turn a blind eye in case the private property of an individual is sought to be encroached upon by none other than the Gram Panchayat as is clearly discernable in the instant case,

from the evidence led during trial.

6. It needs to be pointed out that the site plan i.e. Ex.D-1 was got prepared by the defendant from the same draftsman i.e. DW-5 Gian Chand, who had also earlier prepared the site plan Ex.P-1 of the plaintiffs. While stepping into the witness box, this witness admitted to have prepared both the above site plans of the property. He categorically deposed that while carrying out the demarcation, he had taken all the necessary measurements at the spot. He could not dispute that the earlier report i.e. Ex.P-1, which was prepared by him on 07.06.2017, was indeed at total variance with the report Ex.D-1, which was prepared just five months later. In view of the apparent material contradictions in both the site plans i.e Ex.P-1 and D-1 qua the property of the plaintiffs, site plan Ex.P-4/A, which was produced in an earlier litigation in the year 2003 with one Mansa Singh, becomes all the more relevant. The said site plan i.e. Ex.P-4/A clearly shows that the street adjoining the property of the plaintiffs (subject matter of the present dispute) was straight having no bend or curve in it. Still further, the local commissioner, who was appointed on the request of both the parties, after visiting the spot has unequivocally mentioned in his report (Ex.PW-2/B) that there is a curve in the street adjoining the property of the plaintiffs whereas the site plan Ex.D-1 is to the contrary and as already noticed above, there is no curve reflected therein.

7. In the aforementioned circumstances and material on record, it stands established that the defendant had evidently encroached upon the property of the plaintiffs. Thus, it does not lie in its mouth to take the objection that the Civil Court had no jurisdiction to entertain the suit in question.

8. As a sequel to the above, this Court finds no reason to differ with the concurrent findings recorded by the Courts below. Accordingly, the present appeal being devoid of any merit, stands dismissed. The judgments and decree passed by the Courts below are affirmed.

01.04.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No