

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 874 of 2021

Date of Decision: 13.12.2022

Sunil Mohindar

... Petitioner(s)

Versus

Vijay Arora and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Nikhil Chopra, Advocate
for the petitioner(s).

Mr. Rakesh Chopra, Advocate
for the respondent No.1 and 2.

Anil Kshetarpal, J.

1. During the pendency of the suit, the petitioner's application for permission to lead additional evidence, in order to prove the layout plan attached in the sale deed executed around the year 1940, has been dismissed.

2. The plaintiffs have filed a suit for grant of decree of permanent injunction restraining the defendants from encroaching upon a passage with a consequential relief of mandatory injunction directing them to remove the already encroached portion. The trial court has dismissed the application on the following grounds:-

- i) It is beyond the pleadings of the plaintiff.
- ii) The plaintiff cannot be permitted to fill in the lacuna in his case.
- iii) Such sale deed was in the knowledge of the plaintiff prior to the filing of the application.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The entire dispute between the parties is with regard to the width of a passage. The sale deed bearing No. 1295 was executed and registered somewhere in the year 1940. Along with the aforesaid sale deed, a layout plan was produced which shows the width of the alleged street. This document would help the Court in properly adjudicating the case. It is well settled that the evidence is not required to be made a part of the pleadings. Hence, the trial Court has erred in observing that such document is beyond the pleadings.

5. The trial court has also erred in observing that the plaintiff No.2 (petitioner herein) cannot be permitted to fill up the lacuna of his case. The application for leading additional evidence is filed in order to produce additional evidence when it is found relevant in establishing the case of the party seeking to produce it. In other words, the application for leading additional evidence is filed by the party only to make good the deficiency in leading evidence in order to prove a fact. Hence, the trial Court was not correct in observing that the plaintiff No.2 cannot be permitted to fill in the lacuna in his case.

6. As regards the knowledge of the document, it would be noted that the plaintiffs have explained that the aforesaid documents may be in the personal knowledge of the plaintiff No.1, however, it was not in the knowledge of the other plaintiffs. In any case, such documents shall help the Court in fairly adjudicating the matter.

7. Keeping in view the aforesaid facts, the present revision

the sale deed along with the layout plan in evidence, subject to payment of cost of ₹500/-. The defendants shall be given an opportunity to lead counter-evidence, if required. The objection with regard to the admissibility of the document is kept open.

8. Needless to observe that the observations made in this order shall not be construed as final expression of opinion on the merits of the case.

(Anil Kshetarpal)
Judge

December 13, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No