

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 782 of 2011 (O&M)

Date of Decision: 08.04.2022

Dr. Subhash Chander Sharma

... Appellant(s)

Versus

Shri Baldev Raj

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kanwal Goyal, Advocate
for the appellant(s).

Mr. Puneet Jindal, Senior Advocate
with Ms. Navdeep Jawanda, Advocate
for the respondent.

Anil Kshetarpal, J.

CM-3086-C-2013

1. As prayed for, the application for seeking permission to amend the written statement is dismissed as withdrawn.

RSA-782-2011

2. While assailing the correctness of the judgment and decree, passed by the First Appellate Court, the defendant has filed the present appeal. The trial Court has dismissed the suit, filed by the plaintiff, whereas, the First Appellate Court has reversed the aforesaid judgment and decree.

3. The facts of the case are short and simple. The plaintiff is claimed to be the owner in possession of a bigger parcel of land. He sold a constructed area measuring 1 kanal and 11 marlas to the defendant vide sale

deed dated 07.03.1996. Apart from the khasra numbers, the property was

identified by the various properties which are located in all the four directions. As per the sale deed, the house sold to the defendant has the following boundaries:-

East	Owner’s – 120 feet
West	Passage 20 feet/120 feet from Hoshiarpur Road upto the owner’s land in Lamba Pind out of the land of the owner
North	Road/ 70 feet- Hoshiarpur Road
South	70 feet – owner’s property

4. The dispute between the parties is with regard to the existence of passage on the Western side of the house. The plaintiff claims that the defendant has no right to open a door or window towards the Western side, which is the passage. The plaintiff claims that he has a triangular plot on the Western side and thereafter, there is a passage. Per contra, the defendant claims that as per the sale deed, there exists a passage towards the Western side, which is 20 feet wide and 120 feet long, starting from Hoshiarpur Road upto the owner’s land in Lamba Pind.

5. The trial court dismissed the suit, whereas the First Appellate court has reversed the judgment while recording a finding that the plaintiff is owner of the land measuring 120x120x12.6 inches.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as record of both the Courts below, which was requisitioned.

7. The learned counsel representing the appellant contends that the registered sale deed between the two parties is a special contract and once the plaintiff sold the house to the defendant, while describing 20 feet wide passage on its Western side, the plaintiff, now, cannot claim that the property

on the Western side is not a passage, but exclusively his property.

8. Per contra, the learned senior counsel representing the plaintiff contends that the land underneath the passage exclusively belongs to the plaintiff, therefore, the defendant has no right to use the same. He contends that as per description given in the sale deed, the rights over the use of passage were never sold to the defendant. While elaborating, he submits that the defendant has constructed a house on the plot measuring 1 kanal and 11 marlas, which had no opening on the Western side. He further submits that there is a triangular piece of land which belongs to the plaintiff and he cannot be deprived of its use. He further submits that the defendant has a passage towards the Northern side of the property because it abuts the Hoshiarpur road. In the alternative, the learned counsel representing the plaintiff has stated that at this moment, passage is spread in a diagonal manner, therefore, the plaintiff will take 20 feet wide passage abutting the property of the defendant. The learned counsel representing the appellant has stated that the passage in existence abuts his property and is in straight line.

10. After hearing the learned counsel for the parties, at length, this Court is of the considered view that the First Appellate Court has erred in overlooking the sale deed, which is a contract between the parties. The First Appellate Court was much impressed by the layout plan reflecting availability of a triangular plot between the property sold to the defendant and the passage. The Court further felt impressed by the fact that the aforesaid passage is not a public passage. In the considered opinion of this Court, both the reasons are incorrect. As per recital in the sale deed (Ex.P3),

the Western side of the property sold to the defendant, there is a 20 feet wide passage having length of 120 feet from Hoshiarpur road upto the owners' land in Lambi Pind. Once the property was sold with the recital that the Western side of the property has a passage, then the triangular plot depicted in the layout plan would result in changing the boundary of the plot sold. Hence, the First Appellate Court was wrong in observing that there is a wrong recital in the sale deed. As regards the second reason, no doubt, the passage is a private passage, however, such passage can be used jointly by the plaintiff as well as the defendant. Once the plaintiff has sold the house in question to the defendant, while projecting that the house has also a 20 feet wide passage on its Western side, then, he, now, cannot take a U-turn from the statement he made before. In fact the plaintiff, after having sold the property to the defendant, while describing the Western arm of the property sold to be abutting 20 feet wide passage, is estopped from changing his stand. It is a different matter that the land underneath the passage belongs to the plaintiff, however, he cannot stop the defendant from using the aforesaid parcel of land for a joint passage. It is not the case of any other party that it is a public passage. The passage will remain as a private passage which would, now, belong jointly, be used by the defendant as well as the plaintiff.

11. Now, this Bench proceeds to examine the argument of the learned counsel representing the respondent.

12. The first argument needs no elaboration, because while describing the passage on the Western side, the plaintiff himself has stated that the property sold, abuts a passage which is 20 feet wide. Once the plaintiff has sold a part of his property, while describing its four sides, then

he cannot, now, claim that he has some additional land on the Western side.

13. The next argument of the learned counsel representing the respondent is that the house was already in existence and there was no opening towards the Western side, therefore, the right to use the passage was never transferred. Once the property, with specific dimensions and boundaries, is being sold and a passage abuts the aforesaid sold property, then the purchaser cannot be restrained from using the passage.

14. The next argument of the learned counsel representing the respondent is that the land underneath the passage has never been sold. To that extent, he is correct. However, once the owner of a larger plot has carved out a plot and a passage from his own land, then he cannot, subsequently, change his stand, particularly when he has sold that plot through a registered sale deed to another person while projecting that the passage is in existence. In the sale deed, there is no clause which prohibits the defendant from using the passage.

15. Keeping in view the aforesaid facts, the present appeal is allowed. The judgment and decree, in appeal, are not sustainable and the same are set aside.

16. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 08, 2022
“DK”

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