

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-57-2014 (O&M)

Date of Decision:06.07.2022

Manjit Singh and another.....Appellants (Defendants)

Versus

Raghbir Singh and others Respondents (Plaintiffs)

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Ramesh Sharma, Advocate
for the appellants.

Mr. Naresh Prabhakar, Advocate
for the respondents.

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MANJARI NEHRU KAUL, J.

1. Suit for permanent injunction filed by the respondents-plaintiffs was decreed by the trial court vide judgment and decree dated 23.12.2010 and as even the appeal preferred by the defendants against the said decree failed and was dismissed on 17.09.2013, they are before this court in Regular Second Appeal. Parties to the lis, hereinafter shall be referred to by their original positions in the suit.

2. Plaintiffs prayed for permanent injunction for restraining the defendants from installing/opening any window, door or ventilator in the wall marked as 'AB' shown in red colour in the site plan annexed with the plaint.

3. In brief, the case as set out by the plaintiffs was that their houses, shown in red colour in the site plan, were situated on the southern side of the house of defendant No.1 where the plaintiffs had been residing along with their family members. In-between the houses of the plaintiffs and

the defendant No.1, there was no public street or common area of the parties. In July 2006, during the absence of the plaintiffs from their village, the defendants by misrepresenting before the village Gram Panchayat, tried to raise a pucca public passage between the houses of the plaintiffs and the defendant No.1 by putting construction material like crusher and sand etc. at the spot. When the plaintiffs returned to their village, they immediately approached the Gram Panchayat and protested qua the same by bringing to their notice that no land belonging to the village Panchayat was in-between their houses and the house of the defendant No.1, where the latter was trying to carry out construction by installing doors, windows etc. in the wall shown as 'AB' in the site plan without their consent which would open into the passage towards the houses of the plaintiffs. The Gram Panchayat on verification found that the said area indeed was not part of any public passage and did not even belong to the village Gram Panchayat. A resolution was then passed on 21.07.2006 wherein it was decided that no useful purpose would be served in removing the building material which had been brought to the spot by the defendant No.1, and the Gram Panchayat charged Rs.8,000/- from the plaintiffs for the said material. The plaintiffs deposited the aforementioned amount against proper receipt dated 22.07.2006. It was averred that on account of this act of the defendants, the plaintiffs were being subjected to constant nuisance. On 28.08.2006 the defendants along with their muscle men yet again came to the spot with building material and attempted to install windows etc. on the wall at 'AB' shown in the site plan. However, they were prevented from doing so by the plaintiffs. Hence, the suit in question was filed by the plaintiffs for decree of permanent injunction to restrain the defendants from installing and

opening the windows, door, ventilator etc. towards the houses of the plaintiffs.

4. On being put to notice, the defendants appeared and filed their written statement. They controverted the pleaded case of the plaintiffs by submitting that there was a 'pucca' drain and 'pucca' public street in existence which merged with the road coming from village Amanipur and extended till the gate of the houses of the plaintiffs as shown in the site plan. It was further submitted that the 'pucca' drain had been in existence since long and had been constructed by the Gram Panchayat. Both the pucca drain and street were within the Panchayat deh and in the ownership of the village Panchayat. It was also submitted that the site plan on which reliance had been placed by the plaintiffs was incorrect and the property described therein by the plaintiffs was not owned by them. There was no haveli of the plaintiffs as depicted in the site plan. It was also alleged that the receipt dated 22.07.2006 had been procured by the plaintiffs after exerting pressure on the Panchayat as the wife of plaintiff No.1 was a member of the Panchayat and the Sarpanch feared that in case he did not oblige the plaintiffs he could lose the post of Sarpanch.

5. Replication to the written statement was filed by the plaintiffs wherein the submissions made in the written statement were vehemently denied.

6. Learned counsel for the defendants-appellants reiterated the submissions made in their written statement and the stand taken before the trial court. He further vehemently argued that both the courts below failed to appreciate that the house of the plaintiffs-respondents was not in front of the disputed street but at a considerable distance from the house of the

defendants-appellants, and in case windows and doors were even installed in the house of the defendants they would in no manner create any nuisance to the plaintiffs as their privacy would not be intruded into.

7. Heard and perused the relevant material on record.

8. Upon consideration of the matter in issue and the evidence led, both the courts below rightly concluded that the plaintiffs had successfully proved that there was no public passage or street on the southern side of the house of the defendant No.1 and thus the defendants had no right to install much less open any doors, windows, ventilator etc. in the wall, shown as 'AB' in the site plan Ex.P3. The plaintiffs in support of their case examined the Panchayat Secretary who proved on record the resolution of the Panchayat dated 21.07.2006 and the receipt dated 22.07.2006 issued to the plaintiffs. The plaintiffs also examined Piara Singh who had been a member of the Panchayat and he too categorically deposed that there was no public street in-between the houses of the plaintiffs and the defendant No.1. Still further, PW4 Jarnail Singh, Advocate, who was appointed as the Local Commissioner, visited the spot and submitted his report Ex.P4. As per the said report, there was no ventilator, door or window etc. in wall 'AB' although there existed a pucca drain alongside the same. All the three site plans i.e. Ex.P3 produced by the plaintiffs, Ex.P5 by the Local Commissioner and Ex.D1 relied upon by the defendants, clearly revealed that it was only the house of the plaintiffs which was located on the western side and there existed no other house much less of any other villager. It is thus evident that the area in dispute was not being used by the public at large as a passage, as had been claimed by the defendants in their written statement. Had the passage indeed been used as a public street, there was

nothing which prevented defendant No.1 from installing ventilators, doors and windows on the wall marked 'AB' earlier. They would not have waited for so long to do so and that too when the plaintiffs were stated to be away from the village. Not only this, the Panchayat did not even come forward to stake their claim over the area in dispute which the defendants claimed to be a public street and in the ownership of the village panchayat. Still further, no evidence was led by the defendants from which it could be even remotely inferred, nor any suggestion was given during trial to any of the plaintiffs witnesses that the drain running alongside the wall marked 'AB' was constructed from the funds of Gram Panchayat. The drain in question evidently stands constructed by the plaintiffs to discharge dirty water from their houses.

9. On being pointedly asked, the learned counsel for the defendants-appellants was unable to refer to anything on record to show if the conclusions arrived at by both the courts below were contrary to the record or suffered from any material illegality.

10. As a sequel to the above, this court does not find any ground to interfere with the well reasoned findings recorded by both the courts below. The appeal being devoid of merit is accordingly dismissed.

06.07.2022
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No