

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

RSA-5122-2018 (O&M)

Date of decision: 01.12.2022

Hari Ram through his LRs

....Appellant

Versus

Sumarti

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushil K Verma, Advocate for the appellant

Mr. R.S.Malik, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. The plaintiff through his legal representative assails the concurrent findings of fact arrived at by both the courts below though the trial court granted the limited relief of injunction to the plaintiff, however, the First Appellate Court has decreed the counter claim in entirety/completely. It has come on record that the plaintiff claims property on the basis of the sale deed dated 16.03.1985. A major portion of the property allegedly purchased by the plaintiff forms a part of the public street whereas the remaining portion was already sold in favour of the defendant vide the sale deed dated 29.01.1985.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the appellant contends that the First Appellate Court has erred in declaring the sale deed executed in favour of the plaintiff as illegal although no prayer to that effect of such declaration was made in the counter claim. He submits that in absence of the specific prayer made the First Appellate Court should not have

granted decree of declaration.

4. It may be noted here that the plaintiff filed a suit for grant of decree of declaration with a consequential relief of permanent injunction and mandatory injunction. The defendant while filing the written statement filed the counter claim and sought declaration that the portion marked by letters GHBJ is a part of the public street whereas he is the owner in possession of the remaining portion. In para 1 of the counter claim, he gave details of the property purchased by him through a registered sale deed dated 29.01.1985.

5. Para 1 of the counter claim and the prayer clause are extracted as under:-

“1. That the suit property shown in colour red vide letters GHBJ is public rasta and plot shown in green colour vide letter BCEF is exclusive property of answering defendant. The plaintiff has no right, title or interest in the above mentioned property. At the back of the present suit he wants to encroach upon the said land for which he has no right, title or interest. The defendant has purchased the said land vide registered sale deed vasika No.7321 dated 29.01.85 and since then she is in possession. After purchasing the said plot sons of the defendant constructed rooms in portion AFDE and let the portion EFBC vacant for their pets, cow and buffalos cattles etc. They have constructed a tin shed over part of the said portion for their cow and buffalos etc. The plaintiff has no right, title or interest in the said property. In order to encroach the passage (rasta aam) he also wants to encroach the property of the defendant shown by letters EFBC. The plaintiff has no right, title or interest in the suit property. The defendant is enjoying her property peacefully and regularly paying house tax water tax and electricity bills etc. to their concern department.

The Prayer:- “A decree of mandatory injunction against the plaintiff directing him to remove the iron gate from point GH as mentioned in site plan attached with the written statement may kindly be passed in favour of the defendant against the plaintiff and a decree of declaration that HGBJ is a part of Rasta aam be passed in favour of defendant against the

plaintiff.”

6. Admittedly, the defendant is not the executant of the sale deed dated 16.03.1985 in favour of the plaintiff. He was not in a position to seek its annulment. Once the defendant has purchased the property prior in point in time, his rights are superior to that of the plaintiff. The court has already granted declaration that the defendant (respondent herein) is the owner in possession of the property. The aforesaid declaration implicitly declared that the sale deed executed in favour of the plaintiff (appellant) was not affecting the rights of the defendant.

7. Learned counsel representing the appellant did not press any other issue.

8. Hence, dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

01.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE