

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1574 of 1990
Date of decision : 21.03.2023

Bhagat RamAppellant

Versus

Singh Ram Respondent

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Hari Om Sharma, Advocate for the appellant.
Mr. Gurmail Singh Duhan, Advocate for the respondent.

B.S. Walia, J.

[1] Challenge in the regular second appeal by the plaintiff is to the judgment and decree dated 19.03.1990 passed by the learned Additional District Judge, Kurukshetra in Civil Appeal No.56/13 of 1989, dismissing the suit filed by the plaintiff by reversing the judgment and decree dated 30.01.1988 passed by the learned Sub Judge, Kaithal.

[2] Learned Counsel for the appellant plaintiff contended that the following issues were framed by the learned Sub Judge, Kaithal, in the civil suit filed by the appellant :-

1. *Whether the defendant is owner in possession of the suit property ? OPD*
2. *Whether the plaintiff has got only one way for ingress and egress to the suit property as alleged in para No. 2 of the plaint? OPP*
3. *Whether the suit is not maintainable in the present form ? OPD*
4. *Whether plaintiff has got no locus standi to file the present suit ? OPD*
5. *Whether the plaintiff has suppressed to immaterial*

facts, if so, to what effect ? OPD.

6. *Whether the plaintiff has got no cause of action to file the present suit ? OPD.*
7. *Whether the suit is bad for non-joinder of necessary parties ? OPD*
8. *Relief.*

and that on the basis of the pleadings and evidence led by the parties, the trial Court decided the issues in favour of the appellant / plaintiff and against the respondent / defendant and in view thereof decreed the suit and directed the respondent / defendant to remove the encroachment earmarked ABCD in site plan dated 18.10.1985, within one month from the date of the judgment. However, on appeal, the Additional District Judge, Kurukshetra vide judgment and decree dated 19.03.1990 reversed the judgment and decree dated 30.01.1988 passed by the Sub Judge, Kaithal and dismissed the civil suit by wrongly relying on the report of the Local Commissioner, Lajpat Rai, despite evidence to prove that the appellant / plaintiff had no other path except the disputed path leading to his plot, the disputed site being 'gali shareaam' and 'shamlat' and the respondent / defendant having no right, title or interest to raise any construction thereon, therefore, the impugned judgment and decree was liable to be set aside and the judgment and decree passed by the Sub Judge, Kaithal upheld.

[3] [i] Per Contra, counsel for the respondent / defendant contended that the appellant plaintiff in order to establish that the suit land was common passage and he had a right to pass through the passage, had placed on record site plan (Ex. P/1) showing his plot in green colour boundary and the passage in dispute in red colour, besides, had examined ,PW-1 Suresh Kumar, Draftsman who had prepared the site plan but the site plan Ex. P/1

could not be taken into account as the same was prepared by PW-1 on the

basis of a rough sketch produced before him by the appellant / plaintiff and without visiting the spot, besides, PW-1 had conceded that he was not aware about the situation at the spot.

[3] [ii] Learned Counsel further contended that the appellant / plaintiff while appearing as PW-2 had deposed that the disputed portion shown in red in the site plan (Ex.P/1) was a passage and was being used by him for the last 50-60 years but the same was blocked by the respondent / defendant, a few days prior to the filing of the civil suit on account of his absence from the village but in cross-examination, he admitted that there was a boundary wall around the disputed place, that his plot was lying vacant as also that there was a passage between the house of Mann Singh and Lijja and said passage went upto the house of Surjan, that there was one gate in the east, but he could not give the measurement of the disputed land. Learned Counsel contended that the appellant / plaintiff also examined Dalel Singh, Block Patwari who deposed that Plot No.1491 belonged to Maya Ram, while Plot No. 1492 belonged to Shingara and that there was a passage in between Plot No.1492 and 1485 and the same lead to plot No. 1491, that there was a passage in the North and West of Plot No.1492, that photocopy of the village map, Mark A reflected the location of the houses and passages of the *abadi deh*, that he had not brought the complete map of the village but only a portion thereof made on a separate paper and had given statement only on the basis of said portion of the village map but had not seen the spot nor had any personal knowledge about the layout of the village.

Learned Counsel contended that in the circumstances, the evidence of PW2 as well as Dalel Singh, Block Patwari did not in any way advance the claim of the appellant / plaintiff nor could the same be relied upon.

[3] [iii] Learned Counsel further contended that no doubt PW-4, Babu

Ram stated that the passage in red colour was a common street and the only passage for ingress and egress for the appellant / plaintiff from his bara and that he had seen him going to his bara from the common street but about two years ago, the respondent / defendant had raised wall at points AB & CD and blocked the passage, that there was no 'katcha' wall at the place where new pucca wall had been built up but in cross-examination he could neither disclose the name of the mason who had raised the wall nor how many days were taken in raising the wall nor after how many days of construction of the wall, he saw the wall for the first time nor he mentioned the measurement of the place in dispute nor that of bara of the appellant / plaintiff besides he also admitted that there was a street towards the South of the bara of the appellant/plaintiff and Surjan, as also of there being a gate of respondent / defendant Singh Ram in the street coming from the North side.

[3] [iv] Learned Counsel for the respondent defendant next contended that Respondent / defendant Singh Ram appeared as DW-1 and deposed that the suit land was neither '*shamlat*' nor street and that the plot of Surjan and Bhagat Ram, appellant / plaintiff was vacant and towards the South of his house and that one street reached said plot from the southern side and that another vacant plot of Surjan was situated there and in that plot also the street reached from the South and that walls at points AB & CD were in existence since the past about 40-50 years but the same were katcha and in a dilapidated condition, therefore he demolished the same and constructed a pucca wall in 6-7 days, about two years and eight months ago in the presence of the appellant/plaintiff in the village without any protest or objection from the appellant plaintiff.

[3] [v] Learned Counsel further contended that the respondent / defendant also examined one Rati Ram, a 70 year old resident of the same

village and he supported the stand of the respondent defendant, besides, Prem Chand, Mistri who constructed the wall also supported the version of the respondent defendant and deposed that he constructed the wall some two and a half years ago. Learned Counsel contended that the respondent / defendant had also placed on record site plan which was prepared by Chand Ram, Draftsman-DW-4 after visiting the spot as against the site plan placed on the record by the appellant plaintiff without PW-1 the draftsman visiting the site.

[3] [vi] Learned Counsel for the respondent / defendant contended that although on the basis of the deposition of the Block Patwari, the learned trial Court concluded that there was a passage in between Plot Nos.1492 and 1485 but from said evidence, it could not be said that there existed any passage through the land of the respondent / defendant, besides it had come in the statement of the Block Patwari that Khasra No.1492 belonged to the respondent / defendant and he nowhere mentioned that Plot No. 1485 belonged to the appellant plaintiff, besides, no *bandobasti* record had been placed on the file showing the ownership of the houses and ahatas. Learned Counsel contended that in the circumstances, it stood established that both plots i.e. Nos.1492 and 1485 belonged to Singh Ram, respondent / defendant, there was a passage in between the plots but the plaintiff had failed to establish that the portion in dispute was a common street for as per the site plan prepared by the appellant / plaintiff, the portion marked in red had been shown as passage in between the house of Singh Ram but in the East also there was a house of Singh Ram and in the west also there were two rooms of Singh Ram, respondent defendant, therefore, there was no possibility of any common passage existing in between the houses of Singh Ram as both Khasra Nos.1492 and 1495 belonged to the defendant. Besides,

the site plan placed on record by the plaintiff was prepared by Suresh Chand, Draftsman admittedly without visiting the spot and on the basis of rough site plan whereas the site plan Ex.D1 placed on record by the defendant was prepared by Chandgi Ram, Draftsman after visiting the spot and in the said site plan, there was no passage to the plot in dispute from the northern side i.e. from the house of defendant Singh Ram but a street 10 feet 8 inches wide coming from the southern side after the house of the plaintiff and in the south adjoining the main gali, moreover from the village map, photocopy i.e. Mark-A, the position of the house of the appellant / plaintiff and respondent / defendant was not clear, no street had been shown in map Mark -A, nor location of Khasra Nos.1492 and 1485 could be ascertained nor there was any list of persons attached with the map showing the ownership of the houses or ahatas whereas site plan Ex.D2 was accurate as it had been prepared by the Draftsman after visiting the spot and was in accordance with the position at the spot.

[3] [vii] Learned Counsel further contended that during the pendency of the appeal before the learned District Judge, Kurukshetra, Sh. Lajpat Rai, Office of Kanungo, Kurukshetra was appointed as Local Commissioner and he visited the spot and gave a report as per which there was a passage from the southern side leading upto plot No.837 which belonged to Singh Ram-defendant and Singh Ram-defendant had given a passage from the same along with the western side of his plot and said passage led to plot No.360 belonging to Surjan and the plaintiff jointly, therefore, the plaintiff and Surjan had a passage from the southern side to their joint plot and in the eventuality of division between the two, they were to make arrangement amongst themselves of a passage for the person who would get the northern portion, therefore, it stood established that the plaintiff had a passage to his

plot from the southern side and his house was also situated towards the southern side and any passage towards the north side was of no use to him because he would have to travel a long distance upto his house and since his plot was lying vacant, there is no substance in his version that he was using the plot since the time of his forefathers.

[4] [i] I have considered the submissions of learned counsel. Admittedly, PW-1 Suresh Kumar, Draftsman did not prepare the site plan after visiting the spot but on the basis of a rough sketch produced before him by the appellant / plaintiff, besides he admitted that he was not aware about the situation at the spot. In the circumstances, site plan Ex. P-1 is of no avail to substantiate the claim of the appellant plaintiff.

[4] [ii] Secondly, the appellant / plaintiff while appearing as PW-2 admitted in cross-examination, that his plot was lying vacant, that there was a boundary wall around the disputed place, but he was not able to tell the measurement of the disputed land. Further, Dalel Singh, Block Patwari examined by the appellant / plaintiff although had placed on record photocopy of the village map showing the location of the houses and passages of the *abadi deh* but the same was not exhibited and was Mark –A. Dalel Singh also stated that he had not brought the complete map of the village but only a portion thereof made on a separate paper and that statement given by him was on the basis of the same only and he had neither seen the spot nor had any personal knowledge about the situation of the village. In the circumstances, the evidence of Dalel Singh, Block Patwari does not advance the claim of the appellant plaintiff nor the same can be relied upon.

[4] [iii] Likewise, evidence of PW-4 Babu Ram also does not inspire confidence as despite stating that about two years ago, the respondent /

defendant had raised wall at points AB & CD and blocked the passage, that no 'katcha' wall existed at the place where new pucca wall had been built up, but he could not tell the days taken in raising the wall nor after how many days of construction of the wall, he saw the wall for the first time nor he mentioned the measurement of the place in dispute nor that of bara of the appellant / plaintiff, nor the name of the mason who had raised the wall. He also admitted that there was a street towards the South of the bara of the appellant/plaintiff and Surjan, as also of there being a gate of respondent / defendant Singh Ram in the street coming from the North side.

[4] [iv] Apart from the above, the Respondent / defendant, Singh Ram while appearing as DW-1 stated that the suit land was neither '*shamlat*' nor street and that the plot of Surjan and Bhagat Ram, appellant / plaintiff was towards the South of his house and was a vacant plot, that one street reached said plot from the southern side while another vacant plot of Surjan was located there and in that plot also the street reached from the South and that walls at points AB & CD were in existence since the past about 40-50 years but the same were katcha and in a dilapidated condition, therefore he demolished the same and constructed a pucca wall instead in 6-7 days about two years and eight months ago in the presence of the appellant/plaintiff without any protest from him. Respondent / defendant also examined Rati Ram, a 70 year old resident of the same village who supported his version, besides, Prem Chand, Mistri who constructed the wall also deposed in his favour that he constructed the wall some two and a half years ago. The respondent / defendant also placed on record the site plan prepared by Chand Ram, Draftsman in support of his stand and who appeared as DW-4 and stated that he had prepared the site plan after visiting the spot.

[4] [v] The submission that from the evidence of the Block Patwari, it

could not be said that there existed any passage through the respondent / defendant's land also merits acceptance as no *bandobasti* record was placed on the file showing the ownership of the houses and ahatas, besides, it having been established that plot Nos.1492 and 1485 both belonged to Singh Ram, respondent / defendant, and although there was a passage in between the plots, but the plaintiff could not prove that the portion in dispute was a common street for as per the site plan placed on the record by the appellant / plaintiff, red portion had been shown as passage in between the house of Singh Ram but in the East also there was a house of Singh Ram and in the west also there were two rooms of Singh Ram, respondent defendant, therefore, there was no possibility of a common passage existing in between the houses of Singh Ram as both Khasra Nos.1492 and 1495 belonged to the defendant. Further, the site plan placed on record by the plaintiff was prepared by Suresh Chand, Draftsman without visiting the spot, whereas site plan, Ex.D1 placed on record by the defendant was prepared by Chandgi Ram, Draftsman after visiting the spot and in the said site plan, there was no passage to the plot in dispute from the northern side i.e. from the house of defendant Singh Ram but a street 10 feet 8 inches wide coming from the southern side after the house of the plaintiff and in the south adjoining the main gali. Besides, from the village map, photocopy i.e. Mark-A, the position of the house of the appellant / plaintiff and respondent / defendant is not clear, nor any street is shown in the map nor location of Khasra Nos.1492 and 1485 can be ascertained nor there is any list of persons attached with the map showing the ownership of the houses or ahatas whereas site plan Ex.D2 is more accurate as it was prepared by the Draftsman after visiting the spot and in accordance with position at the spot.

[4] [vi] Further, PW-4, Babu Ram was not resident of the locality and

his house was located much away from the street in dispute and he was unaware as to when the wall was constructed, who had constructed the same, after how many days he saw the wall after it had been constructed whereas the defendant examined the *mistri* who constructed the wall and stated that he constructed the same about two and a half years prior to his appearing in the witness box i.e. some 8-9 months prior to the filing of the civil suit. Moreover, Rati Ram, an old man of 70 years of village also supported the defendant's version that there was no street before the defendant's house.

[5] It also needs noticing that during the pendency of the appeal before the learned District Judge, Kurukshetra, Sh. Lajpat Rai, Office of Kanungo, Kurukshetra was appointed as Local Commissioner who visited the spot and gave a report as per which there was a passage from the southern side leading upto plot No.837 belonging to Singh Ram-defendant who had given a passage from the same along with the western side of his plot and said passage led to plot No.360 belonging to Surjan and the plaintiff jointly, therefore, the plaintiff and Surjan have a passage from the southern side to their joint plot and in case of division between the two, they would be required to mutually settle for passage for the person who would get the northern portion. Accordingly, it stands established that the plaintiff has a passage to his plot from the southern side and his house is also situated towards the southern side and any passage towards the north side would not suit him because he would have to travel a long distance to get to his house and since his plot was lying vacant, there does not appear to be any merit in his version that he was using the plot since the time of his forefathers.

[6] Another aspect of relevance is that vide order dated 31.07.1990, while admitting the instant appeal, stay was declined on the ground that no case for stay was made out. Civil Suit out of which the instant appeal arises was filed

in the year 1985 and now approximately four decades have elapsed since then. However, no effort was made to challenge order dated 31.07.1990. Having acquiesced in said order, the appellant / plaintiff cannot now turn around and seek to unsettle a settled position despite not being able to make out a case. In the circumstances, the appellant / plaintiff has failed to establish that the area in dispute was a common street and that the respondent / defendant has a right to use the passage for ingress and egress to his plot besides, the appellant / plaintiff has a passage for his plot towards the southern side. In view of the position noted above, no ground whatsoever has been made out to interfere with the well reasoned judgment passed by the learned Additional District Judge, Kurukshetra.

[7] No substantial question of law much less question of law arises for consideration in the instant Regular Second Appeal. Accordingly, finding no merit in the same, the regular Second Appeal is dismissed.

(B.S. WALIA)
JUDGE

21.03.2023
'Amit'

<i>Whether Speaking/reasoned</i>	:	<i>Yes/No.</i>
<i>Whether reportable</i>	:	<i>Yes/No.</i>