

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

RSA-516-1993 (O&M)

Reserved on: 22.03.2023

Date of pronouncement: 27.03.2023

Hans Raj

...Appellant

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Salil Dev Singh Bali, Advocate for the appellant.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Om Parkash had brought a suit against defendant Hans Raj seeking a decree for permanent injunction restraining the defendant from encroaching upon the suit property on the averments that plaintiff is owner in possession of the house shown in yellow colour in the site plan attached with the plaint whereas defendant is occupant of the house shown in green colour in the site plan; the defendant has encroached upon the constructed portion ABEF as detailed in the site plan whereas portion shown in the red colour by letters ABC is vacant land and is part of shamlat chowk/street which was being used as passage by the villagers; sometime before filing of the suit, the defendant threatened to encroach upon portion ABC without any right;

according to the plaintiff, the defendant was a displaced person and was settled in village Siwan about 20 years previously only.

2. On getting notice, the defendant appeared and filed a written statement, contesting the suit, raising various legal objections, challenging the locus standi of the plaintiff to bring the suit, further contending that the suit was not maintainable; the civil Court had no jurisdiction to try the suit; the plaintiff was not entitled to discretionary relief of permanent injunction for the reason of having suppressed material facts and that the plaintiff was estopped by his own act and conduct from filing of the suit. On merits, the defendant submitted that the plaintiff was neither the owner nor occupant of the house, rather, the defendant was owner in possession of the house shown in green colour and the portion ABEF was purchased by forefathers of the defendant, as such, there was no question of any encroachment as alleged by the plaintiff; the defendant further contended that an application filed by Ranjit Singh under Section 7(2) of the Punjab Village Common Land (Regulation) Act was dismissed; the defendant denied that site ABC was a vacant site rather contended that it was not part of shamlat chowk; the defendant challenged the correctness of the site plan stating that he had every right to use the suit property which he had been doing for the last several years without any hindrance; he claimed that he had every right to raise construction over it being owner of that property which is about 2 feet higher than the level of the

chowk and has been paved by bricks by the defendant.

3. Plaintiff filed replication, controverting the allegations in the written statement whereas reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the suit property is a part of shamlat chowk being used for ingress and egress for the plaintiff and other inhabitants of the village? OPP.
2. Whether the plaintiff has no locus standi to file the present suit? OPD.
3. Whether the suit in the present form is not maintainable? OPD.
4. Whether this court has got no jurisdiction to try the present suit? OPD.
5. Whether the plaintiff is estopped to file the present suit by way of his own act and conduct? OPD.
6. Whether the plaintiff is not entitled for the exercise of discretionary jurisdiction in his favour? OPD.
7. Relief.

5. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Sub Judge, Ist Class, Kaithal decided issue No.1 against the plaintiff and in favour of the defendant; issues No.2,3,5 and 6 were disposed of since neither any evidence to prove those was led by the defendant nor those were pressed during the course of arguments; issue No.4 was decided in favour of the plaintiff and against the defendant. As a result of findings on the issues, the suit of the plaintiff was dismissed, vide judgment and decree dated 20.02.1988.

7. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff had preferred an appeal before District Judge, Kaithal, that appeal was assigned to Addl. District Judge, Kaithal, who vide judgment and decree dated 11.11.1992 had accepted the appeal, in the process set aside the the judgment and decree passed by the trial Court, observing that the defendant should not raise any construction on the suit land ABC nor should he cause any obstruction whatsoever for the movement of men and material through that.

8. Now it was turn of the defendant to feel aggrieved and he has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff, who had initially put in appearance but subsequently absented.

9. Since the case relates to the year 1993, I proceed to decide it after hearing counsel for the appellant and going through the record.

10. The Ist Appellate Court of Addl. District Judge, Kaithal while reversing the judgment and decree passed by the trial Court has observed that the disputed property falls in abadi of Village Siwan and to determine its ownership and possession, no documentary proof like entries in the jamabandi and khasra girdawri are available, therefore, the controversy has to be adjudged on the basis of evidence led by the parties and circumstances of the case. After deep and thorough analysis as detailed in para No.12 of the judgment, learned Addl. District Judge, Kaithal has concluded that the evidence led by the plaintiff is more acceptable and the location of the land is such that it seems to be more

a part of the street than part of the house of the defendant. The deposition of sarpanch of gram panchayat in favour of the case of plaintiff was also referred to. The case of the defendant has been discussed in para No.16 of the judgment observing that he had taken a definite plea that the suit property is part of his house purchased by his ancestors but he failed to bring on record any such sale deed leading to drawing of adverse inference against him that if produced, the sale deed would not have been favourable to his case.

11. As regards use of disputed property by the defendant by tethering cattle etc., learned Addl. District Judge, Kaithal has rightly observed that such type of user does not result in conferring any valuable right upon the person concerned because normally the vacant piece of land adjoining the houses is used by villagers for tethering cattle etc., and no one can acquire title in this manner.

12. I find that the judgment delivered by the Ist Appellate Court of learned Addl. District Judge, Kaithal is based upon in depth analysis of the evidence available on record and careful consideration of the pleadings of the parties as well as the factual and legal position, whereas, it was not so with regard to the judgment passed by the trial Court which had obviously not appreciated the evidence properly and interpreted the law in an appropriate manner leading to wrong conclusion that the disputed property was not portion of the common chowk being used for ingress and egress by the plaintiff and other villagers.

13. The impugned judgment passed by learned Addl. District Judge, Kaithal is quite detailed, well reasoned and does not suffer from any illegality or infirmity. I do not see any reason to interfere with such judgment, rather no substantial question of law arises in the appeal. The appeal is found to be without merit and is dismissed accordingly.

27.03.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No