

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4970-2019 (O&M)
Date of decision: 11.04.2023

Market Committee Amritsar and another

...Appellants

VS

Swaran Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. P.K.S.Gill, Advocate,
For the appellants.

ARUN MONGA, J. (ORAL)

CM-14147-C-2019

For the reasons stated in application, same is allowed and delay of 63 days in filing the appeal stands condoned, subject to all just exceptions.

Main case

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendants are in second appeal before this Court assailing learned trial Court judgment and decree dated 25.01.2017, as upheld by learned First Appellate Court vide its judgment and decree dated 15.12.2018, decreeing the suit for permanent injunction filed by respondent/plaintiffs.

3. Briefly stated, facts as noticed by Courts below, are as under:-

“Brief facts of the case, it is alleged that plaintiff no.1 and 2 are owner in possession of Khasra measuring 23 kanals 18 marlas bearing khatakhatauni no.94/194, khasra no. 646,647, 648, 649, 652 and plaintiff no.3 and 4 are owners of khasra no. 646 to 649 and 652, 660, 662. It is alleged that there is a passage through khasra no.2416/2, 2417/2, 2418, 2422 which leads to the above said land of plaintiffs which is in existence since time immemorial but now defendants want to encroach the

said passage under the pretext of construction of the main market, Hence, the suit.”

4. Upon notice, defendants appeared and filed written statement wherein it was alleged that no such passage is in existence. It was alleged that defendant department acquired the land in question vide notification no.14/9/93-M-S. It was further alleged that now defendant department is using the same for sale/purchase of grains and for lifting the crop which is basic necessary amenity required for the farmers. Hence suit deserves dismissal.

5. Replication was also filed. Based on rival pleadings, following issues were framed:

*“1. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for? OPP.
2. Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, defendant/appellants herein were restrained from encroaching the passage leading to the land owned by the plaintiffs. Further, defendants were restrained from interfering into the peaceful usage of passage leading to the land owned by plaintiffs. Consequently, suit of plaintiffs was decreed with costs and defendants were restrained from interfering into the peaceful usage of passage leading to the land owned by plaintiffs.

8. Feeling aggrieved, defendants went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by defendants before this Court.

9. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“15. While deciding the issue No.1, it was observed by the learned trial Court that originally the defendants had denied the ownership of the plaintiffs over the site in dispute. During his cross-examination, Jagjit Singh (DW6), who is the record keeper of the revenue record, has admitted that the plaintiffs are co-sharers in the Khasra No.646 to 649, 651 to 660 and 664. Moreover, Tejinder Singh (PW5) has stated that vide letter dated 26.12.2011, the Secretary of the Market Committee had asked the Estate Officer, Municipal Corporation, Amritsar about the passage leading to the above said suit land situated in Circle No.107 of Amritsar Sub Division whereupon he (PW5) had been directed to verify the facts. Accordingly, the reports (Ex.PW5/2, Ex.PW-5/3 and Ex.PW5/4) were prepared wherein it was mentioned that the passage in question was leading to the land owned by the plaintiffs and further that the said passage was the only access to the land belonging to the plaintiffs. Even Jagjit Singh (DW6) has admitted that the passage shown in the site plan (Ex. PW3/1) is existing at the spot. Similarly, Ranjit Singh (DW7) has also admitted the existence of a passage in the site in dispute. Consequently, the issue No.1 was decided in favour of the plaintiffs and therefore the defendants were restrained from interfering with the peaceful use of the passage leading to the land belonging to the plaintiffs.

16. On a scrutiny of the oral as well as documentary evidence available on record, it is found that the plaintiffs have been in a position to prove the existence of the passage at the site in dispute as pleaded by them. Even the witnesses examined by the defendants themselves have admitted the existence of the passage in dispute and further that the said passage is only means of approach to the land belonging to the plaintiffs. As such, the finding of the learned trial Court on the issue No.1, which is based on the evidence available on record and is legal and valid, is liable to be affirmed. It is ordered accordingly.

17. As a result of the above discussion, the point set up for determination in this case, as mentioned in paragraph No.8 above, is resolved in favour of the respondents and against the appellants. Accordingly, the appeal is dismissed with costs.”

10. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record, inasmuch as notice under Section 31 of the Punjab Agricultural Produce Markets Act, 1961 (for brevity, ‘the Act’) was required to be given by respondent/plaintiffs before filing the suit. There is no provision which exempts the notice. Learned Courts below failed to frame proper and correct issues which has caused serious prejudice to appellants.

11. I am unable to persuade myself with the insipidity of the arguments that Section 31 of the Act bars the jurisdiction of the Civil Court. All that which requires is a prior notice ought to be issued before seeking any legal remedy against the committee/Board. *Qua* the same in the written statement, a very bald plea has been taken that proper notice was not issued and, therefore, suit is not maintainable. Pleadings are as vague as it can be that it is not stated what is meant by proper notice i.e., ‘Whether a notice was sent without mentioning Section 31 or it was not sent at all?’

12. For ready reference, Section 31 of the Act is reproduced herein below:

“1) No suit shall be instituted against the Board or a Committee or any member or employee thereof or any person acting under the direction of any such Committee, member or employee for anything done or purporting to be done under this Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of the Board or a Committee delivered to him or left at its office, and in the case of any such member, employee or person as aforesaid, delivered to him or left at his office or usual place of abode, and the plaint shall contain a statement that such notice has been so delivered or left.”

13. That apart when issues were framed if the appellants were so alive to the suit being not maintainable, no steps whatsoever were taken either to get any issue framed or even filing an application that before proceeding with the trial of the case, preliminary issue ought to be framed since jurisdiction of the Civil Court is barred.

14. By their own conduct, appellants acquiesced to the jurisdiction of learned trial Court. Not only that even at the time of filing the first appeal, there is not even a whisper regarding non-maintainability of the suit on the ground of Section 31, *ibid*. All that has been stated *qua* the same is as below:-

“3. Learned trial Court has not framed the proper issues arising out of the pleadings of the parties which has materially affected the decision of the case.”

15. Perusal of the above ground clearly reflects that the grievance made out before learned First Appellate Court is that trial Court did not frame proper issues. What issue ought to have been framed is not mentioned even at the first appeal stage. It is only for the first time in the second appeal that it has been stated that Section 31 of the Act barred the filing of the suit.

16. Having already observed that appellant has acquiesced to the jurisdiction of the Courts below, it is too belated now to come and say that suit ought not to have been entertained. Having participated in the original proceedings, now it is not open for defendant/appellants in this second appeal to raise the contention as to maintainability of the suit, in view of the waiving of the defect, if any, both in the trial Court and the First appellate Court.

17. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

17.1. Except as discussed above, no new arguments have been raised other than reiteration of the stand taken before learned Courts below.

18. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

19. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

20. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.
21. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
22. Pending application/s, if any, shall also stand disposed of.
23. No order as to costs.

(ARUN MONGA)
JUDGE

11.04.2023
Vandana

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