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

**CM-5966-C-2016, CM-5967-C-2016
in/and RSA-2286-2016 (O&M)**

Reserved on:- 13.10.2023

Pronounced on:- 28.11.2023

Rajinder Singh and another

....Appellants

Versus

Paramjit Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Gurcharan Dass, Advocate
for the appellants.

Mr. Kamaldip Singh Sidhu, Advocate
for respondents No. 1 and 2.

AMARJOT BHATTI, J.

CM-5967-C-2016

This is an application filed under Order 1 Rule 10(2) read with Section 151 CPC for deleting the names of Gurdial Singh and Harbans Singh from the array of respondents. It is submitted that Gurdial Singh – respondent No. 5 was plaintiff No. 4 in the civil suit, who died during the pendency of the civil case. No legal representative of Sh. Gurdial Singh came forward for being impleaded as legal representative in the civil suit. Therefore, he is not being impleaded as a respondent in the memo of parties in the present RSA being a dead person. It is further submitted that Sh. Harbans Singh was defendant No. 3 in the civil suit, against whom the suit was dismissed as withdrawn and the said fact has been noted by the learned trial Court while recording the presence of the

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counsel for the parties. Therefore, it is prayed that present application may be allowed and names of Gurdial Singh and Harbans Singh may be deleted from the array of respondents, in the interest of justice.

Heard.

Perusal of file shows that respondent No. 5 - Gurdial Singh was plaintiff No. 4 before the trial Court and as per the pleadings of learned counsel for appellants, he died during the pendency of civil suit and no legal representative came forward to contest the civil suit. Further, the perusal of trial Court file shows that the suit against Harbans Singh was dismissed as withdrawn vide order dated 29.05.2002. In view of the aforesaid facts and circumstances, Gurdial Singh and Harbans Singh are not necessary parties for deciding the present appeal. Accordingly, the present application is allowed and names of Gurdial Singh and Harbans Singh are ordered to be deleted from the array of respondents. Amended memo of parties filed along with the application is taken on record.

CM is accordingly, disposed of.

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1. The appellants/plaintiffs No. 1 and 2 i.e. Rajinder Singh and Manjit Singh have filed the present Regular Second Appeal against impugned judgment and decree dated 19.09.2015 passed by learned Additional District Judge, Ludhiana vide which the appeal preferred by the appellants was dismissed by upholding the judgment and decree dated 30.01.2015 passed by learned Civil Judge (Junior Division), Ludhiana, vide which the suit filed by the plaintiffs was dismissed.

2. The facts of the case are that the disputed site shown in red colour in the site plan carved out of Khasra No. 362 as per jamabandi for

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the year 1986-87 situated at Barewal Awana, now known as Adarsh Nagar was left as a public park for the inhabitants of the locality by the colonizer defendant No. 1 Paramjit Kaur and her associates at the time of selling the plots to the various owners. That in the year 1987-88, the defendant No.1 along with her associates purchased land from Khewatdar of village Barewal Awana in the khasra no.362, hadbast no.157 etc. khata no. 657/985 as per the jamabandi for the year 1986-87. The layout plan out of the land purchased by defendant no. 1 was made as per the attached site plan and the roads, park and various plots were left for the public. The plaintiffs also purchased different plots in the colony from the defendant no. 1 which was named as Adarsh Nagar, Ferozepur Road, near Octroi, Ludhiana. The plaintiffs were assured that the disputed site is left as a park for the future use of the persons who will purchase plots in the locality. The defendants No. 1 & 2 being influential persons and in connivance with police wanted to grab the public park, which was left for the inhabitants of the colony and public at large, which was used by inhabitants and public since the year 1987-88. The plaintiffs along with other residents of locality approached defendants No. 1 & 2 and requested them to admit the claim of the plaintiffs but they threatened the plaintiffs to raise construction and encroach over it. The defendants also collected building material for raising the construction but they were stopped by the Municipal Authority. The residents of the locality gave an undertaking on the stamp paper about the disputed property being a public park. The defendants refused to admit the claim of the plaintiffs. Hence, the instant suit for declaration and challenged the sale deed executed by defendant No. 1 and her associate in favour of her husband or any other relative or agent as illegal, void,

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unlawful and not binding on anybody with relief of permanent injunction, as prayed for.

3. Notice of the suit was given to the defendants. The defendants No. 1 and 2 appeared and filed joint written statement in which raised preliminary objections regarding maintainability. The disputed property is not a public park. The plaintiffs have produced one writing dated 16.05.2001 which is false and fabricated. The signatures of inhabitants of locality were obtained by fraud. The land in dispute is 150 sq. yards and it is not possible for all children and residents of locality to use it as a park. No park was left as alleged. On merits, it was submitted that the boundaries have been wrongly mentioned. The public park was not shown in all the sale deeds as alleged. It was further submitted that a layout plan of the colony was made in which the premises in dispute was not shown as public park. A revised site plan was prepared in which width of roads was reduced from 24' to 20' and a plot was left for park, but the persons of locality did not allow to reduce the width of roads and the original plan was kept as correct. The property in dispute has not been used as public park by any resident of the locality. It was denied that the plaintiffs along with other residents of locality ever approached defendants No. 1 and 2 to admit the claim of the plaintiffs. The defendants never threatened the plaintiffs to illegally and forcibly raise any construction over the property in dispute which was owned and possessed by defendant No. 2 by way of legal and valid sale deed. It was alleged that the defendant No. 2 had already raised construction over the property in dispute, therefore, the suit for permanent injunction restraining the defendants to raise any construction over the property in dispute was not maintainable. The

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plaintiffs are illegally causing hindrance to raise further construction. It was submitted that the plaintiff Manjit Singh had earlier filed civil suit against Harbans Singh, which was decided by the Court of learned Sub Judge, 2nd Class, Ludhiana. While denying the remaining averments, there was a prayer for dismissal of the suit with cost.

During the pendency of the trial, the plaintiffs withdrew the suit against defendant No. 3 and accordingly, vide order dated 29.05.2002, the suit was dismissed as withdrawn against defendant No. 3 Harbans Singh.

4. From the pleadings of the parties, following issues were framed by the trial Court on 28.01.2015 :-

- (1) *Whether the property in dispute is a public park?* OPP
- (2) *If issue No. 1 is proved. Whether the plaintiffs are entitled for decree of declaration and permanent injunction as prayed for?*
OPP
- (3) *Whether the suit is not maintainable?*
OPD
- (4) *Relief.*

5. In order to prove the suit, the plaintiff No. 2 Manjit Singh and plaintiff No. 1 Rajinder Singh themselves stepped into the witness box as PW-1 and PW-3 respectively, reiterating the facts mentioned in the plaint. Thereafter, the plaintiffs examined Rattan Anmol Singh as PW-2, Rajinder Singh as PW-4, Rajiv Pal Dogra, Executive at Tribune office, Ludhiana as PW-5 and Gurmit Singh, Data Entry Operator, Suvidha Centre, DC office, Ludhiana as PW-6. Thereafter, learned counsel for the plaintiffs closed the evidence.

6. In order to rebut the case of the plaintiffs, defendant No. 2 Mukhwinder Singh himself stepped into the witness box as DW-1 and

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tendered his duly sworn affidavit Ex.DA in which he has reiterated the facts mentioned in the written statement. The defendants also examined Inderjit Singh, Draftsman as DW-2. Thereafter, the evidence of defendants was closed by the order of trial Court vide order dated 22.01.2015.

7. PW1 Manjit Singh also tendered certain documents by way of additional affidavit in secondary evidence which are Ex.P-13 to Ex.P-20 and site plan Ex.PW1/A.

8. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiffs was dismissed vide judgment and decree dated 30.01.2015. Feeling aggrieved of this judgment and decree, the plaintiffs filed Civil Appeal No. 8 of 10.02.2015, which was also dismissed vide judgment and decree dated 19.09.2015. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been filed by the appellants/plaintiffs.

9. I have heard the arguments advanced by learned counsel for the parties and have gone through the record carefully. The learned counsel representing the appellants/plaintiffs firstly referred to the application under Section 151 CPC for condonation of delay of 09 days in re-filing the appeal. It is pointed out that due to the certain objections raised by the Registry of this Court, the delay of 09 days in re-filing the Regular Second Appeal has occurred. Therefore, the delay in re-filing the appeal may be condoned and it may be decided alongwith the appeal filed by the appellants/plaintiffs.

The learned counsel for the appellants/plaintiffs further argued that the site in dispute is a public park left for the inhabitants of locality by the colonizer respondent No. 1 Paramjit Kaur and her

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associates out of Khasra No. 362 as per jamabandi for the year 1986-87. In the site plan of colonizer respondent No. 1, Plot No. 47 was left out as a park at the time of selling plots to the various owners. The appellants, respondents No. 4 and 5 and Gurdial Singh had purchased different plots in the colony named as Adarsh Nagar, Ferozepur Road, Near Octroi, Ludhiana. The appellants were assured that the disputed site is a park for the use of inhabitants of the locality. Thereafter, respondents No. 1 and 2 being influential persons tried to grab the aforesaid public park. As a result of this dispute, the present suit for declaration along with permanent injunction was filed. The defendant No.1 executed sale deed in favour of defendant No. 2 her husband regarding the park in question. However, the said transaction will not effect the rights of the plaintiffs and other inhabitants of Adarsh Nagar Colony and the same is not binding on them. In order to establish their claim, the learned counsel for plaintiffs examined Manjit Singh one of the plaintiff as PW-1, Rattan Anmol Singh as PW-2 and Rajinder Singh one of the plaintiff as PW-3, who have confirmed the facts stated in the plaint. The site plan of the property in question is also proved on record as Ex.P-1 and Ex.P-2. The learned counsel for appellants/plaintiffs also examined Gurmit Singh PW-6, Data Entry Operator, DC Office, Ludhiana, currently working at Sub-Registrar East, Ludhiana who has proved on record sale deed dated 25.06.1993 registered on 30.06.1993 Ex.PW6/C regarding a house in Plot No. 46-B measuring 104 sq. yards with the endorsement of Sub-Registrar Ex.PW6/D vide which Harbans Singh and Paramjit Kaur had sold the plot in favour of Balvir Singh and there is another sale deed dated 20.05.1996 registered on 24.05.1996 Ex.PW6/A regarding a house in Plot No. 47-A measuring 200

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sq. Yards with the endorsement of Sub-Registrar Ex.PW6/B vide which Paramjit Kaur sold the plot in favour of Mukhwinder Singh. The learned counsel for the appellants/plaintiffs referred to the sale deed Ex.PW6/C where there is a recital confirming park on the eastern side of Plot No. 46-B. It is argued that regarding the encroachment of plot in question, several complaints were filed. The letters were written to the higher authorities and a news was also published in the newspaper which are Ex.P-13 to Ex.P-17 and copy of news cutting is Ex.P5/2. Despite all this, Paramjit Kaur the respondent No.1/defendant No. 1 in order to defeat the rightful claim of the inhabitants of Adarsh Nagar sold the land which is a park to Mukhwinder Singh. The learned Courts below have failed to consider the recital in the sale deed dated 25.06.1993 registered on 30.06.1993 Ex.PW6/C which clearly shows that there was a park towards eastern side of the plot sold in favour of Balbir Singh. Therefore, the findings given by the Courts below are not justified. The evidence led by the appellants/plaintiffs was wrongly discarded and the suit filed by the plaintiffs was wrongly dismissed firstly by the Court of learned Civil Judge (Junior Division), Ludhiana while passing judgment and decree dated 30.01.2015 and the appeal preferred by plaintiffs No. 1 to 3 and 5 was also wrongly declined by passing impugned judgment and decree dated 19.09.2015 passed by the Court of learned Additional District Judge, Ludhiana. It is prayed that the regular second appeal preferred by the appellants/plaintiffs may kindly be accepted and the suit filed by the plaintiffs may kindly be decreed, as prayed for.

10. On the other hand, learned counsel representing the respondents/defendants No. 1 and 2 argued that the stand taken by the

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appellants/plaintiffs is without any basis. There is no convincing evidence led by them to show that the plot in dispute was a park left for the inhabitants of locality namely Adarsh Nagar. The learned counsel for the respondents No. 1 and 2 has relied upon the authority cited in **2014(1) Recent Apex Judgments (R.A.J.) 697, Supreme Court of India**, in case titled **“Union of India and others versus Vasavi Co-op. Housing Society Ltd. And others”**, where it was held in a suit for declaration of title that *“the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants.”* The judgment and decree dismissing the suit of appellants/plaintiffs by both the Courts below is fully justified. One of the defendant Mukhwinder Singh stepped into the witness box as DW-1 and has proved on record the sale deed dated 20.05.1996 registered on 24.05.1996 Ex.D-1 in his favour. Copy of jamabandi for the year 1996-97 is Ex.D-2, copy of jamabandi for the year 2001-02 is Ex.D-3 and copy of jamabandi for the year 2006-07 is Ex.D-4. The defendant Mukhwinder Singh is duly incorporated in the column of ownership in the land in dispute bearing Khasra No. 362. He also referred to the copy of report of Local Commissioner dated 23.04.2003 Mark-B which clearly shows that no park ever existed as claimed by the appellants/plaintiffs. The matter was also compromised with the intervention of residents of Adarsh Nagar, which is Mark-B. He has also placed on record copy of judgment dated 19.09.2011 in Criminal Complaint No. 64/1 dated 12.06.2001 titled “Manjit Singh and Rajinder Singh versus Paramjit Kaur and Mukhwinder Singh” registered under Section 420/423/425/463/464/467/506/34 of IPC in which they were acquitted of the charge framed against them and there is copy of judgment

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dated 26.04.2013 in Criminal Appeal No. 12 of 07.11.2011 which was again dismissed by learned Additional Sessions Judge, Ludhiana which are Ex.D-6 and Ex.D-7 respectively. The allegations levelled against them were found to be false. The learned counsel further referred to the statement of Inderjit Singh, Draftsman, MCL, Zone D Ludhiana examined as DW-2 who has proved on record the survey plan of Mohalla Adarsh Nagar which is Ex. D2/1 in which there is no reference of park in the property in question. It is pointed out that Rajinder Singh and Mohinder Singh, plaintiffs were not original purchasers of plot in Adarsh Colony. In fact, they have subsequently purchased the same from their vendors. The sale deeds are Ex.P-9 and Ex.P-11 respectively. Therefore, they cannot say that there was any allurements to them regarding existence of alleged park in the colony for the inhabitants of the locality. The present RSA has been filed only by Rajinder Singh and Manjit Singh, appellants/plaintiffs and no other resident of Adarsh Colony have raised any dispute by filing Regular Second Appeal. Thus, they have accepted the verdict of Courts below. The Regular Second Appeal filed by the appellants/plaintiffs is without merits and the same may kindly be dismissed.

11. I have considered the arguments advanced before me and have gone through the record carefully. Firstly I will deal with the application filed by the appellants/plaintiffs under Section 151 CPC for condonation of delay of 09 days in re-filing the Regular Second Appeal. Keeping in view of the averments made in the application, which is duly supported by an affidavit of the appellant No. 2 and in the light of the settled position that a party should not be denied access to justice on hyper technical grounds and in the interest of justice, taking a lenient view, delay

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of 09 days in re-filing the appeal is condoned and the application bearing CM-5966-C-2016 stands disposed of accordingly.

12. I have gone through the record in the trial Court file carefully. The appellants/plaintiffs Rajinder Singh, Manjit Singh and others filed suit for declaration that the site in dispute shown in red colour in the site plan carved out of Khasra No. 362 as per jamabandi for the year 1986-87 situated at Barewal Awana, now known as Adarsh Nagar, is a public park left for the inhabitants of the locality by the colonizer i.e. Paramjit Kaur (defendant No. 1 in the main suit) and the sale deed if any executed by her in favour of her husband defendant No. 2 or any other relative or agent is illegal, null, void, not enforceable or binding on anybody along with the relief of permanent injunction restraining the defendants No. 1 and 2 from raising any sort of construction. The suit filed by the plaintiffs was dismissed by the Court of learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 30.01.2015. The appeal was preferred by four of the plaintiffs i.e. Rajinder Singh, Manjit Singh, Surinder Pal Singh and Mohinder Singh against the aforesaid judgment and decree and the same was also dismissed by passing impugned judgment and decree dated 19.09.2015 by the Court of learned Additional District Judge, Ludhiana. Now, feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been preferred by Rajinder Singh and Manjit Singh, appellants/plaintiffs.

The matter in controversy is whether the property referred above was left out as a park for the inhabitants of Adarsh Nagar Colony or it was a plot owned by the original owner i.e. Paramjit Kaur, respondent/defendant No. 1. The onus was initially on the plaintiffs to

prove his case. In order to establish the existence of park, the learned counsel for plaintiffs examined Manjit Singh PW-1, Rattan Anmol Singh PW-2 and Rajinder Singh PW-3 who consistently stated that the property in question is a park left for the inhabitants of Adarsh Nagar. Manjit Singh as PW-1 tendered the site plan of the property in dispute as Ex.P-2 bearing signatures of Rajinder Singh and Manjit Singh, plaintiffs. He also tendered one layout site plan Ex.P-1 allegedly bearing signatures of Harbans Singh, President, Adarsh Nagar, signed in the year 1992. Earlier Harbans Singh was also arrayed as one of the defendant but suit against him was dismissed as withdrawn vide order dated 29.05.2002. While deciding the present case, both the Courts below concluded that the aforesaid site plans were not proved on record by examining any witness nor it bears the signatures of any of the plaintiff, therefore, the same were not proved on record. So far as signatures of Harbans Singh, defendant No. 3 is concerned, the suit against him was dismissed as withdrawn. Therefore, both the Courts below did not rely upon the aforesaid site plans Ex.P-1 and Ex.P-2. Apart from these site plans, the plaintiffs placed on record various letters/complaints filed before different authorities which are Ex.P-13 to Ex.P-17. The news regarding matter in controversy was also published in the newspaper. The news cutting Ex.P5/2 is proved from the testimony of Rajiv Pal Dogra examined as PW-5. However, on the basis of these complaints and letters, it cannot be said that the property in question was a park left by the original owner/colonizer Paramjit Kaur, defendant No. 1.

Therefore, some evidence was required to establish the existence of said park. In the case in hand, the contesting defendants have examined Inderjit Singh, Draftsman, MCL, Zone D Ludhiana as DW-2

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who has proved the original survey plan of Mohalla Adarsh Nagar, near Octroi Post, Ferozepur Road, Ludhiana and true copy of the same is Ex.D2/1. The best evidence that is original layout plan was available with Paramjit Kaur, defendant No. 1. She has neither stepped into the witness box nor the original layout plan of Adarsh Nagar was placed on record, for the reasons best known to the contesting defendants. It was for defendant No. 1 to bring evidence on the file to rebut the site plans Ex.P-1 and Ex.P-2, relied upon by the plaintiffs. The best evidence available with the respondents/defendants No. 1 and 2 was with-held. The survey plan proved on file by Inderjit Singh, Draftsman, DW-2 was basically the site plan prepared for the purpose of maintenance of roads in Adarsh Nagar and it does not bear the plot numbers as mentioned in the site plan Ex.P-1 relied upon by the appellants/plaintiffs. However, the location of the roads, its width and the area in which the plots were carved out duly matches with the site plan Ex.P-1. The dispute is regarding the triangular area i.e. site in dispute. According to the plaintiffs it was left out as a park for the inhabitants of Adarsh Nagar, which is denied by the contesting defendants.

The plaintiffs examined Gurmit Singh, Data Entry Operator, Suvidha Centre, DC office, Ludhiana, currently working at Sub-Registrar East, Ludhiana as DW-6 who has proved on record two sale deeds i.e. sale deed dated 25.06.1993 registered on 30.06.1993 executed by Harbans Singh and Paramjit Kaur in favour of Balbir Singh regarding a house in Plot No. 46-B measuring 104 sq. yards with the boundaries; East: Park, West: Plot No. 46-C, North: Road and South: Road, which is Ex.PW6/C and the endorsement of Sub-Registrar is Ex.PW6/D. Thereafter, there is another sale deed dated 20.05.1996 registered on 24.05.1996 executed by

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Paramjit Kaur in favour of her husband Mukhwinder Singh regarding a house in Plot No. 47-A measuring 200 sq. yards with the boundaries; East: Street, West: Property of Balbir Singh, North: Street and South: Street, which is Ex.PW6/A with the endorsement of Sub-Registrar Ex.PW6/B. The perusal of aforesaid sale deeds clearly indicates that in the adjoining property sold by Harbans Singh and Paramjit Kaur in favour of Balbir Singh vide sale deed dated 25.06.1993, registered on 30.06.1993 Ex.PW6/C, endorsement of Sub-Registrar is Ex.PW6/D, the park is reflected towards eastern side. After a period of about three years, Paramjit Kaur sold the property in dispute by depicting as a plot of 200 sq. yards in favour of her husband Mukhwinder Singh with the boundaries as referred above vide sale deed dated 20.05.1996 registered on 24.05.1996, which is Ex.PW6/A and endorsement of Sub-Registrar is Ex.PW6/B.

The learned Courts below have failed to consider the boundaries referred in the aforesaid sale deeds and discarded the boundary mentioned towards Eastern side as park in the sale deed of Balbir Singh, by saying that the park was wrongly mentioned, in-fact, it was a lawn. The things would have been different in case the sale deed dated 25.06.1993 registered on 30.06.1993 Ex.PW6/C with endorsement of Sub-Registrar Ex.PW6/D was executed by some subsequent vendor. Then it could have been assumed that the park was wrongly referred towards the Eastern side. In the case in hand, the sale deed is executed by the original owner i.e. Paramjit Kaur, defendant No. 1 and Harbans Singh in favour of Balbir Singh. Therefore, there is no scope of any wrong mentioning of the boundaries. There is nothing on record to show that there was any application filed either by the vendor or by the vendee seeking correction

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of the boundaries. Paramjit Kaur, the original vendor i.e. defendant No. 1 in the main suit has not stepped into the witness box to clarify this fact. Therefore, for staying away from this litigation, adverse inference is drawn. So far as Mukhwinder Singh DW-1 is concerned, he is confirming the execution of sale deed dated 20.05.1996, registered on 24.05.1996 Ex.DW6/A and endorsement of Sub-Registrar Ex.DW6/B in his favour which is admittedly executed by his wife. So far as the criminal litigation initiated against the defendants is concerned in which the defendants were acquitted and the appeal was also dismissed, will have no bearing on the civil litigation.

In view of my discussion, the learned Courts below failed to consider the aforesaid factual position. There was no reason to disbelieve the boundaries mentioned in the sale deed executed in favour of Balbir Singh in which there is specific reference of park towards the Eastern side i.e. the property involved in the present case. The original layout plan has been deliberately with-held by the defendants to conceal the factual position. Therefore, the findings arrived at by the two Courts below, dismissing the suit of the plaintiffs as well as appeal preferred by them is not on sound footing and the same are accordingly, set aside by accepting the present Regular Second Appeal. As a result, the suit filed by the plaintiffs seeking declaration regarding disputed side (as mentioned in the head note of the plaint) as a public park left for the inhabitants of locality is decreed, as prayed for and the sale deed dated 20.05.1996, registered on 24.05.1996 executed by respondent/defendant No. 1 Paramjit Kaur in favour of respondent/defendant No. 2 Mukhwinder Singh is accordingly, set aside, having no effect on the rights of the plaintiffs and other

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inhabitants of Adarsh Nagar with consequential relief of permanent injunction, as prayed for.

The Regular Second Appeal is accordingly, allowed.

Pending application(s) if any, shall stand(s) disposed of.

The photocopies of records received from the two Courts below be sent back to the concerned quarters.

28.11.2023
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(AMARJOT BHATTI)
JUDGE

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