

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
RSA-286-2014 (O&M)
Date of decision: 04.01.2023

Union of India and others	V/S	...Appellant
Asha Gupta and another		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. C.M.Sharma, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

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

2. Having suffered concurrent adverse findings by the two Courts below, the defendants are in second appeal before this Court assailing the trial Court judgment and decree dated 13.01.2011, as upheld by the learned First Appellate Court vide its judgment and decree dated 29.08.2013.

3. Briefly stated, facts as noticed by Courts below are that house in dispute is owned and possessed by the plaintiffs and it is being used by all the family members residing therein for the last many years. They have their ingress and egress from Dass Road, Ferozepur Cantt. There are two entrance gates to the said house; one is main gate towards east side abutting Dass road and side small gate is towards south side abutting the other road.

3.1 It is further alleged that the plaintiffs have fundamental right to stay in their house and to freely use all public roads for approaching their house. No person or authority has any right to put any hindrance or hurdles in their free use of the public roads. Bungalow No.56 was initially purchased by Nathu Ram for Rs.15,000/- being the highest bidder by public auction held on 30.01.1958 and a

certificate of sale of this property was issued by the District Rent and Managing Officer in favour of said Nathu Ram.

3.2 After the death of Nathu Ram, his estate including the house in dispute devolved upon his legal heirs including Manohar Lal and after the death of said Manohar Lal, the plaintiffs being his legal heirs are residing in the house in dispute. The plaintiffs are paying its house tax and water tax. The plaintiffs have further alleged that during the past two years the defendants have gradually caused blockage of Dass Road, Ferozepur Cantt and made it unusable for vehicular traffic.

3.3 Defendants No.2 and 3 initially erected low fencing on either side of the road, as shown in blue colour in the site plan, as a result of which Dass road stood blocked from the middle and became useless for any kind of vehicular traffic. Subsequently, they put up a concrete notice board in the middle of the road thereby blocking the road and had also dug two large deep trenches measuring 20'X20' at two different places and had also dug a third shallow trench as well in the said road.

3.4 The erection of fencing, digging up of trenches and putting up a concrete notice board by the defendants are allegedly illegal hurdles created by the defendants which had affected the free use of Dass road by the plaintiffs. The defendants are also alleged to have erected fencing at point 'Y' in site plan to further block and restrict the width of the left over area of Dass road and had installed a gate to further directly restrict the ingress and egress of the plaintiffs and other inhabitants of the said area.

3.5 The plaintiffs have no other access to approach to their house. Now defendants No.2 and 3 are alleged to have started constructing a high fence in the area and have also erected such fencing abutting the southern wall of the house of the plaintiffs by leaving a small entrance to the house of the plaintiffs.

3.6 It is further pleaded that Dass road and the roads approach that area are sanctioned roads and exist in the record of Cantonment Board, Ferozepur as well as in the site plans in possession of the Army authorities. The defendants have no legal or moral authority to block any road in any manner. The roads, passages, by-lanes are in fact public properties in which the public has interest of its free user.

3.7 The plaintiffs requested the defendants to remove all the blockages caused by them and admit their claim and even the plaintiffs served notice under Section 80 CPC upon the defendants, but to no effect, hence the civil suit.

4. Upon notice, defendants No.1 to 3 appeared and contested the suit by filing written statement taking preliminary objection of concealment of facts. In fact, Security fencing around the defence land at Ferozepur has been sanctioned as operational works and the work has been executed by 116 Engineer Regiment at this station and due to the security reasons the open patches of land between various bungalows have been blocked by fencing along with two gates i.e., one in the east and other in the south.

4.1 The defendants have also averred that no fencing has been erected in front of these gates to deny passage to the occupants of the Number bungalow Number 56(P). However, the occupants are having as many as five gates from various directions. No fencing in front of those five gates have been put and thus they enjoy the free ingress and egress of the main and side gates of their residential house.

4.2 The answering defendants further asserted that the occupants of this bungalow are keeping 10-12 buffaloes which was creating cattle menace in Cantt. area and to overcome this nuisance temporary blockage over Defence land would have been erected, however, their gates have never been blocked. On merits, the

defendants have, in fact, denied all the allegations of the plaintiffs, as pleaded in the plaint.

5. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP?*
- 2. Whether this suit is not maintainable in its present form? OPD*
- 3. Whether the plaintiffs have concealed the material facts from the Court? OPD*
- 4. 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, issue No.1 was decided in favour of the plaintiffs and issues No. 2 and 3 were decided against the defendants. Consequently, suit of plaintiffs was decreed with costs by the trial Court.

8. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

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

XXX

XXX

“There is no denying the fact that some sort of blockage are being erected by the defendants on the road meant for ingress and outgress from the house of the plaintiffs. No substantive and cogent reason has been made out by the learned counsel for the defendants/appellants as to what was the sound foundation on the basis of which the defendants are laying their claim so as to substantiate their plea regarding erection of the blockage near the house of the plaintiffs. During the course of leading evidence, the defendants have failed to support their version on the basis of any documentary evidence and under the garb of the security they have taken the plea regarding erection of blockage etc. No justifiable ground has been made out by the defendants in this regard and in the absence of any cogent and corroborative testimony, the plea raised by them regarding causing hindrance in the use of passage etc. meant

for the plaintiffs would not suffice so as to dissuade the plaintiff from the use of the said passage. Where the action complained of is the result of party's own wrong, it cannot be compensated by way of discarding the claim of the opposite party who is seeking relief against erring party. While granting the relief to the party through injunction inconvenience having been suffered by the said party is to be seen. The relief against the party can be granted by the court if defendant/party is itself wrong and in appeal if things complained of outcome of defendants' own wrong then on the basis of the plea having been taken by the defendants in appeal, the relief given to the plaintiffs by the learned lower court cannot be set aside. While administering justice, equity always plays an important role and the court cannot lose sight of the equities and thus, help a wrong doer.

In the present case, the plea of the defendants is not based upon substantive, sufficient and cogent ground to raise barricade etc. near the house of the plaintiffs. So, in the peculiar facts and circumstances of the present case, I am of the opinion that no such ground at all has been made out by the defendants which could justify to set aside the order of the learned lower court, and the learned lower Court has rightly opined to grant the relief which has been challenged in this appeal. Since no substantive ground has been made out by the appellants in this case, so the plea taken by the appellants would not suffice so as to discard the relief given by the learned lower Court. Thus, both the appeals having been filed by the appellants are without any substance and as such, the same are dismissed with costs."

10. Shorn of details, the submissions in this RSA are that the judgments passed by the Courts below are without jurisdiction, these have been passed in hot haste, are based on conjectures and surmises, are contrary to law and evidence on record.

11. Having perused the impugned judgments, my considered opinion is that the submissions made before the 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 were passed in hot haste or that the same are based on conjectures and surmises.

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

13. 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.

14. 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 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

15. 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.

16. Pending application/s, if any, shall also stand disposed of.

17. No order as to costs.

(ARUN MONGA)
JUDGE

January 04, 2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No