

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

RSA-3183-2014 (O&M)

Reserved on: 13.02.2023

Date of pronouncement: 17.02.2023

Krishan Kumar

...Appellant

Versus

Ramesh Kumar and others

...Respondents

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

Present: Mr. U.K. Agnihotri, Advocate and
Mr. Vikas Katal, Advocate for the appellant.

H.S. MADAAN, J.

In nutshell, the facts of the case are that plaintiff Krishan Kumar had brought a suit against defendants Ramesh Kumar, Sarpanch Gram Panchayat Barwa, Tehsil Siwani, District Bhiwani as well as Tara Chand and Inder Chand seeking a decree for grant of permanent injunction restraining the defendants from interfering in ownership and possession of his residential house fully detailed in headnote of the plaint and site plan attached therewith.

2. As per case of the plaintiff, he is owner in possession of the house in suit and he has stacked bricks in the open space forming part of his house for the purpose of raising construction. The defendants have no concern therewith but still they threatened to dispossess the plaintiff from the suit property illegally and forcibly and

to obstruct him from raising construction in such property giving rise to cause of action to the plaintiff to bring the suit in question.

3. On getting notice, the defendants appeared and filed written statement, contesting the suit, raising various legal objections, and on merits, contending that the suit property is owned and possessed by Gram Panchayat with which the plaintiff has no concern. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. No replication was filed.

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

- 1. Whether the plaintiff is entitled for decree for permanent injunction as prayed for in the headnote of the plaint? OPP.*
- 2. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.*
- 3. Whether the suit is not maintainable in the present form? OPD.*
- 4. Whether the plaintiff is estopped from filing suit by his own act and conduct? OPD.*
- 5. Whether the suit is bad for want of mis-joinder and non-joinder of necessary parties? OPD.*
- 6. Relief.*

6. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

During the course of evidence of plaintiff, he got his statement recorded as PW1 and repeated on oath his case as given in the plaint. He further examined PW2 Virender Kumar, Rajesh Sharma

as PW3 and Ved Parkash as PW4.

7. In rebuttal, the defendants examined DW1 Ramesh Kumar and DW2 Krishan. The defendants had relied upon document Ex.D1.

8. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Siwani decided issue No.1 partly in favour of the plaintiff and against the defendants; issues No.2 to 5 were decided against the defendants and in favour of the plaintiff. As a result of findings on the issues, vide judgment and decree dated 08.08.2012 the suit of the plaintiff was partly decreed in the process restraining the defendants from interfering in the peaceful possession of the plaintiff in the portion mark ABCD shown in the site plan attached with the report of Local Commissioner.

9. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff had preferred an appeal before District Judge, Bhiwani, which was assigned to Addl. District Judge, Bhiwani, who vide judgment dated 25.04.2014 dismissed the same.

10. Still feeling aggrieved, the plaintiff has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents/defendants but they failed to put in appearance despite service.

11. I have heard learned counsel for the appellant besides going through the record and I find that there is no merit in the appeal. At the very outset, it may be mentioned that with respect to the suit property regarding which the plaintiff had brought the suit in question,

a residential house of the plaintiff is admittedly standing there and the Courts below have granted injunction to him in that regard. The dispute is with respect to the open space only. According to learned counsel for the appellant, the suit property is situated within *abadi deh* abutting *pucca* street which had been brick paved by the village Gram Panchayat. Drains are there on both the sides of the street for the purpose of disposal of water. The site in question is situated between the street along the drains and house of plaintiff. The village gram panchayat or any of the defendants have no concern therewith.

12. However, after going through record, I find that the plaintiff has no concern with the vacant space, rather it vests in the Gram Panchayat of the village. The judgment by the trial Court goes to show that in para No.17, the relevant discussion is there which for ready reference is being reproduced as under:-

“The evidence discussed above shows that the plaintiff has constructed his house in the suit property as shown in the site plan Ex PW3/A and site plan with Local Commissioner report Ex. D1. It is admitted case of the parties that the house constructed in the suit property belongs to the plaintiff. The only dispute between the parties is that the plaintiff is claiming ownership of whole abutting the main street shown in green colour in site plan Ex. PW 3/A whereas defendants are alleging that the open space shown in the site plan Ex. PW3/A abutting on the road shown in belongs to Gram panchayat and public is utilizing the same. Although the plaintiff has examined four witnesses mentioned above to show that he is owner in possession of the whole suit property. However, their evidence cannot be accepted in toto as their

evidence has been rebutted by the evidence of the defendants as well as report of the Local Commissioner Ex. D1. It is pertinent to mention here that during the pendency of the suit, a local Commission Sh. Sher Singh Balada, Advocate was appointed to visit the suit property and give the existing position of the same and he submitted his report Ex. D1 supported by rough site plan. A perusal of the report shows that the plaintiff has constructed pucca foundation from mark ABC and adjoining it, there is open space. It has also come in the evidence of the plaintiff side that the Gram Panchayat has constructed a pucca sewerage passing through the suit property. When Gram panchayat has constructed a sewerage through the suit property as shown in site plan Ex. PW 3/A, then plaintiff has no right to say that he is owner of that portion of suit property. He has not raised any objections when the said sewerage was developed nor he has alleged in his pleading that this sewerage was constructed by the Gram panchayat forcibly or without his consent through his land. When he has already raised foundation up to mark B and C shown in the site plan attached with report of the local commissioner Ex. D1 then he has no right to claim ownership of the open space shown in the site plan Ex. PW3/A. No doubt, it has come in evidence on the record that the plaintiff has kept bricks in the open space out side mark CDEMNI shown in the site plan prepared by local commissioner. It cannot be said that by putting bricks for raising construction in the public land, he would also become owner in possession of that partition of the suit property. The plaintiff has no concern with the land mark as BCDEMNIKI and H shown in the site plan attached with local commissioner. That open land is belonging to public and Gram Panchayat and plaintiff has no right to raise in construction in the said open land. But at the same time, defendants have no right to interfere in the suit property

consisting house of the plaintiff and including portion shown as marks ABCD shown in the site plan attached with the local commissioner report.”

13. Learned Addl. District Judge, Bhiwani has also taken note of all these facts, in particular admission of plaintiff in his cross-examination that sewerage pipes pass through this site which work was got done by the Gram Panchayat that clearly points out that the plaintiff is not owner of this site, otherwise, he would not have allowed the Gram Panchayat to pass sewerage pipes through this vacant space. Therefore, both the Courts refused injunction of the plaintiff with regard to open space, though, he was granted injunction with respect to the residential portion.

14. The judgments passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

17.02.2023

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(H.S. MADAAN)
JUDGE

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