

**RSA-203-2018 (O&M) &
RSA-1202-2018 (O&M)**

**Neutral Citation No.: 2023:PHHC:092120
Neutral Citation No.: 2023:PHHC:092117**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: July 20, 2023

1. RSA-203-2018 (O&M):

Smt. Santosh Bansal

...Appellant

Versus

State of Haryana and others

...Respondents

2. RSA-1202-2018 (O&M):

Malti Bansal

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

**Present: Mr. Tejas Bansal, Advocate, for
Mr. Sanjiv Kumar Aggarwal, Advocate,
for the appellant(s).**

SANJAY VASHISTH, J.

1. This judgment shall decide two identical appeals, i.e. RSA-203-2018 and RSA-1202-2018, inasmuch as, facts and subject matter of suit property in both appeals are same.

Plaintiff/appellant – Smt. Santosh Bansal has filed RSA-203-2018,

impugning the judgment and decree dated 26.07.2017, passed in Civil Appeal No. RBT-189 of 2015, whereby judgment and decree dated 20.11.2014, passed by the Court of learned Civil Judge (Junior Division), Kaithal [in Civil Suit No. RBT 74 of 2013], dismissing the suit, was maintained.

Similarly, plaintiff/appellant – Malti Bansal has filed RSA-1202-2018, impugning the judgment and decree dated 26.07.2017, passed in Civil Appeal No. RBT-26 of 2016, whereby judgment and decree dated 15.02.2014, passed by the Court of learned Civil Judge (Junior Division), Kaithal [in Civil Suit No. RBT 561 of 2012], dismissing the suit, was maintained.

Both the aforementioned appeals have been preferred by the appellant(s) against concurrent findings of facts and law, recorded separately in each case by both the Courts below. Learned counsel for the appellant(s) while fairly admitting that the factual position, as also the findings recorded by learned Courts below are same, opted to address arguments only in one appeal, i.e. RSA-1202-2018. Accordingly, for convenience, facts are being referred from RSA-1202-2018.

2. Suit for injunction prohibiting the defendants from encroaching upon any portion of land mentioned in para No. 1 of the plaint, was instituted by appellant – Malti Bansal (hereafter referred to as ‘plaintiff’) against the respondents/defendants, i.e. (1) State of Haryana through Deputy Commissioner, Kaithal; and (2) Public Works Department (B&R) through its Xen, Kaithal. Plaintiff claimed that land measuring 14 Kanals 11 Marlas,

comprised in Khasra No. 414, entered at Khewat No. 411; and land measuring 13 Marlas, comprised in Khasra No. 414/1, entered at Khewat No. 411, situated within the revenue estate of village Patii Kayasth Seth, Tehsil and District Kaithal, was co-owned and jointly possessed by many persons, and they also constructed their house over the land, bearing MCK No. 1290, measuring 331 Sq. Yards. The owners of aforementioned land, and adjoining owners of land mentioned in para No. 1 of the plaint, carved out a passage of 22 feet in width in Khasra No. 414 and 414/1, towards its western side, shown in Firoji colour in the site plan. The said passage is the only passage for ingress and egress of the aforesaid house. Plaintiff further claimed that the house alongwith all rights appurtenant thereto, constructed by the persons mentioned in para No. 2 of the plaint, was sold to her, vide sale deed dated 26.06.2006. Since then, plaintiff has been using the suit property continuously and peacefully. The apertures, i.e. doors and windows etc. (shown in green colour) of the house of plaintiff, were opening in the passage shown by Firoji colour in the site plan. Said passage was left with the consent and mutual understanding of the persons whose property is situated towards western side of Khasra No. 414 and 414/1.

Defendants raised a wall just adjacent to the western wall of the property purchased by the plaintiff and closed the door etc. of the house of the plaintiff. Faced with extreme hardship, suit was filed by the plaintiff.

3. While dealing with the pleadings, issues were framed thereon and evidence was led by both the parties. Thereafter, learned Trial Court recorded

its finding that the suit property is, in fact, situated in Khasra No. 413 and not in Khasra No. 414 and 414/1 of Khewat No. 411, as claimed by the plaintiff. Trial Court also recorded its finding that Kurukshetra Development Board is developing the land of Dera Baba Sheetal Puri. Kurukshetra Development Board and Dera Baba Sheetal Puri, have not been impleaded as party in the suit, despite of being a necessary party. Thus, the Trial Court found the suit to be deficient, and as it did not implead the concerned required parties, therefore, no direction, order or finding could be recorded at their back. The findings recorded in paragraph Nos. 14 and 15, by the learned Trial Court, are reproduced herebelow:-

“14- I have heard ld. Counsel for the plaintiff and ld. Counsel for the defendants and have gone through the case file carefully. This Court is of the considered opinion that plaintiff Malti Devi alongwith others purchased the land in khasra No. 414 and 414/1 bearing MCK No. 1290 measuring 331 Sq. yards vide sale deed No. 1603 dated 26.06.2006 which is Ex.P-1. It is the contention of plaintiff that plaintiff and owners of adjoining land carved out a passage of 22 feet in width in khasra No. 414 and 414/1 which is only passage for ingress and egress of the houses constructed in the suit land. It is evident on file that most of constructed was demolished. As per plaintiff the western wall of that houses is still in existence and doors as well as windows open towards the passage shown firoji color in site plan are still in existence but defendants are raising construction of a wall by closing the doors, windows and ventilator of the house of the plaintiff. From the perusal of document Ex.DWC/1 it transpires that defendant No.2 that after filing of the present suit, moved an application before the SDM, Kaithal for getting demarcation of khasra No. 414, 414/1 of khewat No. 411, copy of application as Ex.DW-2/A alongwith that application site map Ex.DC/2 has also been filed which is the same site map filed by the plaintiff as Ex.P-19. On that application field kanungo demarcated the suit property and got prepared the report Ex.DW-2/A, according to which suit property shown in site plan consist over khasra No.

413. In this regard he prepared rough site map Ex.DD. From the perusal of demarcation report Ex.DW-2/B, it transpires that suit property shown in site plan fall in khasra No. 413 and not fall in khasra No. 413. From the perusal of site map Ex.DD prepared by Kanungo, it is also clear that houses of the plaintiff situated over the part of khasra No. 413 which has been encroached by the owners of khasra No. 414. Only portion shown as mark-A to C shown in site map Ex.DD belongs to khasra No. 414 and over that portion no construction raised by the defendants as evident from the photographs Ex. P-6 to P-17. (emphasis added)

15- Further, it is also evident on file that Sh. S.K. Aggarwal Xen PWD, B&R, Kaithal made a statement in Court on 26.04.2011 that they are not interfering in khasra No. 414 and 414/1 i.e. the particular land 331 Sq. yards purchased by the plaintiff as per sale deed Ex.P-1 and they will not interfere in the area of passage, which also shows that defendants had no intention to raise any construction over the land of plaintiff and also no intention to interfere in khasra No. 414 and 414/1. Further, from the perusal of document Ex.D-A, Ex.D-B, it transpires that Kurukshetra Development Board Kurukshetra developing the land of dera which is belong to Dera baba Sheetal Puri. In this way Kurukshetra Development Board Kurukshetra and Dera Baba Sheetal Puri are the necessary parties in the present suit but the plaintiff failed to implead both of them in the present case despite raising objection by the defendants in their written statement. Further, from the perusal of copy of Ex-sijra Ex.DFA, it transpires that there is no passage of 22 feet as alleged by the plaintiff in their plaint. From the entire discussion above, plaintiff failed to prove issues No.1 in her favour.” (emphasis added)

4. Even finding no illegality or perversity, concurrent findings by learned lower First Appellate Court have also been recorded while upholding the judgment and decree dated 15.02.2014, passed by learned Trial Court. Paragraph No. 14 of the judgment dated 26.07.2017, passed by learned Additional District Judge, Kaithal, says as under:-

“14. The purchase of property is not disputed by the defendants. Malti Devi along with others purchased the land in khasra no.414 and 414/1 within MCK no.1290 measuring 331 sq.

yards vide sale deed no.1603 dated 26.6.2006. The plaintiff has taken a plea there exists a 22' rasta in khasra no.414 and 414/1. However, the learned trial court observed that Ex.DWC/1 was an application before the SDM for demarcation of khasra no.414 and 414/1. As per Ex.DW2/A suit property was shown over khasra no.413. From the site map Ex.DD it was clear that houses of the plaintiff were situated over the part of khasra no.413 which has been encroached by them. Shri S.K.Aggarwal, XEN, PWD (B&R) had made a statement that they are not interfering in khasra no.414 and 414/1 especially the land belonging to the plaintiff. From Ex.DA and Ex.DB it is clear that Kurukshetra Development Board is developing the land of the Dera which belongs to Dera Baba Sheetalpuri and therefore no injunction could be granted in favour of the plaintiff and against the defendants from developing that land. The learned trial court accordingly rightly gave its findings in favour of the defendants. Moreover the Dera Baba Sheetalpuri was the owner of the land bearing khasra no.413. Even if the Kurukshetra Development Board the developing agency and PWD (B&R) Kaithal carried out the developing work, for seeking injunction the plaintiff was required to implicate Dera Baba Sheetal Puri as a necessary party which has not been done so by the plaintiff even after taking the preliminary objection in this regard by the defendants itself. The argument of the learned counsel for the appellant that state of Haryana being made a party Kurukshetra Development Board is automatically included in it is not tenable because Kurukshetra Development Board being actually in consultation with PWD department taking out development activities was necessary and proper party. Therefore the learned trial court had rightly dismissed the suit of the plaintiff on merits as well as on the basis of nonimpleading of the necessary party. No ground is made out to interfere into the well-reasoned judgment of learned trial court and the findings of the learned trial court on the aforesaid issues are accordingly affirmed.”

5. It is relevant to mention here that similar findings have been recorded by learned Trial Court as well as learned lower First Appellate Court in the suit and appeal preferred by plaintiff – Santosh Bansal. The only difference is that in the suit instituted by her, though Kurukshetra Development Board through its Secretary was impleaded as defendant No. 3, but Dera Baba

Sheetal Puri, was not impleaded as a party in the suit.

6. After going through the reasoning given by learned Trial Court on facts as well as law, of not impleading necessary parties in the suit, this Court is also of the view that the relief claimed by the plaintiff could not be considered in their absence.

7. Thus, finding no illegality, irregularity or perversity, I do not find any substance to interfere with the well reasoned impugned judgment(s) and decree(s), passed by learned Courts below in these two appeals, and the same are maintained.

8. No question of law, much less any substantive question of law arises in these appeals, and the **same are accordingly dismissed.**

(SANJAY VASHISTH)
JUDGE

July 20, 2023
Pkapoor

Whether Speaking/Reasoned: ✓YES/NO
Whether Reportable: ✓YES/NO