

2024:PHHC:012250

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

RSA-1187-1990 (O&M)
Date of decision: 29.01.2024

Malik Ram and another

....Appellants

Versus

Santokh Singh (deceased) through his LRs

..Respondent

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Ms. Raina S. Thakur, Advocate for the appellants
Mr. Rahul Sharma, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the defendants assail the correctness of the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The respondent (plaintiff before the trial court) filed a suit for the grant of decree of permanent injunction restraining the defendants from alienating or occupying the piece of land depicted with words 'ABCD' in the layout plan and from forcibly constructing the wall. On 21.07.1967, the plaintiff purchased the property from Sh.Prita Singh Bhogal. The defendant is the owner of a shop, however, it is the case of the plaintiff that the defendants want to encroach upon his area. The defendants, while contesting the suit, claim that they are the owners in possession of the property for the last 33 years vide conveyance deed dated 15.10.1965 executed by the Rehabilitation Department. It was

claimed that in between the property of the plaintiff and defendant, there is a municipal street 10 feet wide and drains have been constructed on both the sides.

4. The trial court dismissed the suit on the ground that the plaintiff has failed to prove his ownership as the original sale deed was not produced, though its certified copy was produced. The First Appellate Court found that an application for permission to lead secondary evidence was filed and thereafter, the plaintiff was permitted to lead evidence. The First Appellate Court held that the application for permission to lead secondary evidence was deemed to have been allowed.

5. It has come on record that the plaintiff has purchased 8 kanals 18 marlas and constructed a factory and residence. Originally, father of PW3 Sh.Prita Singh Bhogal was the owner, who died and after his death, Sh.R.S.Bhogal became the owner. Though, the defendant did not produce the conveyance deed, however, the plaintiff produced the conveyance deed dated 15.10.1965. Certified copy of the layout plan issued by the Rehabilitation Department showing that the shop allotted to the respondent was 48 feet x 39.6 inches was also produced. This layout plan was proved by DW3 Santokh Singh.

6. The First Appellate Court has found that the defendant is already in possession of 48 feet x 39.6 inches and therefore, he has no right to interfere in the plaintiff's possession of remaining portion. It has further been found that the municipal committee never paved the street as claimed by the defendant.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

8. Learned counsel representing the appellant submits that existence of a street between the property of the plaintiff and the defendant proves that the plaintiff has no right, title or interest in the properties located across the street.

9. This Court has considered the submissions made by the learned counsel representing the parties.

10. No record from the Municipal Committee has been produced to prove the existence of street. The plaintiff has purchased the property by way of a sale deed executed in the year 1967.

11. On the other hand, the appellants claim property on the basis of conveyance deed dated 15.10.1965, 'Ex.P3'. The layout plan proves that the allotment in favour of the defendants was only a shop measuring 48 feet x 39.6 inches.

12. Keeping in view the aforesaid facts, no ground to interfere is made out.

13. Hence, dismissed accordingly.

14. All the pending miscellaneous applications, if any, are also disposed of.

29.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE