

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

121

RSA-1554-1993 (O&M).
Date of Decision: 23.04.2024.

PARTAP

... Appellant

Versus

SMT. SAHABO DEVI AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. S.K. Hooda, Advocate,
for the appellant.

Mr. Kartar Singh Malik, Advocate,
for respondents No.1 and 3 to 6.

Respondent No.2 already ex parte before the Appellate Court.

VINOD S. BHARDWAJ, J (ORAL).

Appellant-defendant is in second appeal against the concurrent findings recorded by the Court of Additional Senior Sub Judge, Charkhi Dadri in Civil Suit No.579 of 1984 vide judgment and decree dated 31.01.1992 and subsequent dismissal of appeal filed by the appellant, by the Additional District Judge, Bhiwani, in Civil Appeal No.39 of 1992 vide judgment and decree dated 22.05.1993.

2 Briefly summarized, the facts of the present case are that the respondents-plaintiffs approached the civil Court averring that they have a

constructed house and that there was a passage measuring 14 to 17 feet wide and 45 feet long adjacent to the said house. The passage started from the village chowk and the house of Richpal and went up to the house of Harnarain etc. The said passage was in existence for 400 to 500 years and that there is no other passage for the plaintiff to reach their house. The appellant-defendant was alleged to have encroached upon the said passage by raising construction on an area of about 6 feet. An application under Section 133 Cr. P.C. was also filed for removal of the same and parties were challaned in proceedings under Section 107/151 Cr.P.C. The Assistant Collector First Grade, Charkhi Dadri, dismissed the said application on the ground that he was not competent to hear the same. It was further averred that the respondents-plaintiffs could not take his camel cart through the said passage on account of encroachment by way of the said construction over the passage.

3 The appellant-defendant contested the claim raised by the respondents-plaintiffs and claimed that the disputed property is owned and possessed by the appellant-defendant and it was neither a shamlat-deh nor ever vested in the Gram-Panchayat. It was also objected that the respondents-plaintiffs have not given correct area of the passage and have prepared a wrong site plan and have wrongly shown the location of the house near the passage. They disputed the “Massavi” and that there is no passage in existence at the site. Other claims raised in the plaint were also denied. It was submitted that the property was part of Ahata No. 17 and was being used by the appellant-defendant as their sole and exclusive property and that the respondents-plaintiffs thus did not have any right, title or

interest in the occupation, utilization and enjoyment of the said passage. The proceedings under Section 133 Cr.P.C. and case under Sections 107/151 Cr.P.C. were, however, admitted.

4 Replication to the written statement was filed controverting the plea raised by the appellant-defendant.

5 On completion of the pleadings, the following issues were framed:-

1) Whether the disputed site is a passage as alleged in the plaint, if so to what effect? OPP

2) Whether the plaintiff is using the path in dispute for more than 200 years back and no other path as alleged? If so, to what effect ?

3) Whether the suit land has not been properly described ? If so, to what effect? OPD.

4) Whether the defendant has willfully disobeyed the order of the court? if so, to what effect? OPP.

5) Whether this court has no jurisdiction as alleged in para No.1 of the preliminary objections? OPD

6) Whether the suit is not maintainable in the present form? OPD.

7) Whether the plaintiff has no locus-standi to file the present suit? OPD

8) Whether the plaintiff has concealed true facts and has not come with clean hands? If so to what effect? OPD

9) Whether the suit is false, frivolous and the defendant is entitled to special cost? OPD

10. Whether the doors shown at 'A' and 'B' are opened only for the last 2/3 years and the defendant is entitled to get them closed? OPD.

10-A) Whether the defendant has raised construction in contravention of the order of the Court and as such is liable for contempt of Court? OPP

10-B) whether the report of the Local commissioner is liable to be set aside, as alleged in the objection partition? OPD.

11.Relief.

6 Parties led their respective evidence and upon consideration of the same, the Additional Senior Sub Judge, Charkhi Dadri, recorded a finding that width of the street was not 14 to 16 feet as per record or on the spot and that it was a street of 8` 6``. It was also recorded that Ami Chand etc. were the predecessors in interest of the appellant-defendant who were owners of the property and the appellant acquired interest from them. It was also recorded that the respondents-plaintiffs' witnesses also admitted that the street was 8 feet 6 inches wide. As per the report furnished by the Local Commission, the existing street was only 8 feet 3 inches. The suit of the respondents-plaintiffs was hence partly decreed in their favour and the appellant-defendant was restrained from encroaching upon the street having

the width of 8 feet 6 inches shown in the site plan EX.P-2/EX.D2 attached. The appellant-defendant was directed to demolish the construction raised by him in the area of the street so as to make a clear street of 8 feet 6 inches.

7 Aggrieved of the above said judgment and decree dated 31.01.1992, passed by the Additional Senior Sub Judge, Charkhi Dadri, an appeal was preferred by the appellant-defendant before the District Judge, Bhiwani, which was dismissed by the Addl. District Judge, Bhiwani, vide judgment and decree dated 22.05.1993. It was recorded by the Addl. District Judge, Bhiwani, that the area of the street is not in dispute and it has also come forth in the report of the Local Commission that the width of the street is less as compared to the passage provided as per the record and that the extent, to which an encroachment has been made, ought to be removed by the appellant-defendant. It was also noticed that the existing width of the passage was insufficient to take camel cart or any other vehicle due to encroachment. It was also noticed that there is no subsisting right of the appellant-defendant to continue encroachment on the passage, hence, the appeal was dismissed.

8 Aggrieved thereof, the present appeal has been filed.

9 Learned counsel for the appellant-defendant contends that the dispute is only with respect to 03 inches of passage on which an encroachment has been made even as per the report of the Commission and that the parties are residing at the village since long. Directing demolition of any encroachment at this stage is only likely to aggravate the circumstances at the local level and result in breach of peace in the village.

10 Learned counsel for the respondents-plaintiffs contends that the same cannot be the ground for the appellant-defendant to justify his encroachment on the land and that the parties have litigated uptill this Hon'ble Court for that very 3 inch of passage. It is submitted that the respondents-plaintiffs had to suffer the agony of having a blocked access/passage to their house and that they had to park their vehicles outside the street and face difficulties in taking the same to their house. He thus submits that the respondents-plaintiffs have suffered continued inconvenience and that in the absence of any right or title, the appellant-defendant cannot claim that his encroachment ought to be protected in law.

11 No other argument has been raised.

12 I have heard learned counsel appearing for the appellant-plaintiff and have also gone through the record with their able assistance.

13 The issue is only with respect to the encroachment of the passage of 8 feet 6 inch area by an area of 3`` Both the Courts have concurrently recorded that a passage of 8 feet and 6 inch was provided at the spot as per the report of the Local Commission whereas the existing passage was only 8 feet and 3 inches. A concurrent finding has been recorded that there had been encroachment by the appellant-defendant.

14 The arguments of the appellant-defendant had been dealt with by the Additional District Judge, Bhiwani and a finding was recorded in para No.9 which is extracted as under:-

“9. I have given my due deliberations to these contentions of the learned counsel for the appellant and in my view, there is no force in his submissions. There are a number of reasons for

coming to this conclusion The appellant has not got appointed any local Commissioner to determine that the site in suit forms part of Ahata Nos. 7, 8, 10, 12 and 17 and as such he cannot now urge that the site in dispute forms part of the afore-said ahatas. In the second place, it is urged that the proceedings were initiated before the court of Assistant Collector Ist Grade, Charkhi Dadri who visited the spot and prepared the report Ex.P.3 on 10-4-1984. He had also earlier visited the spot on 16.11.1983 and prepared his report Ex. P-4. These reports prove the existence of a street towards the northern side of the land belonging to appellant Partap. The width of the passage varies from place to place and it cannot be ascertained with authenticity that the width of the site in dispute was 14 feet as claimed by the plaintiff-respondents. The onus heavily rested on them to prove that the width of the street was 14 feet and the appellant has encroached over the portion of the street. The existence of the street is admitted by the witnesses of the appellant-defendant himself. Ishwar Singh DW-3 unequivocally sworn that there is a street adjacent to the house of the defendant Partap. There is yet another reason to prove the existence of the street. Undisputedly, the houses of Dharampal, Richhpal and Ramphal abut this street and the doors of their house upon towards the street. The factum of the existence of the house is admitted by the appellant Partap in his sworn statement but he has explained that the land was given by him to Dhanpat Singh, Ramphal and Richhpal and the plaintiffs have no right to pass through this passage. I am afraid I do not concur with the ipsi dixit of Partap. The existence of the street is proved beyond doubt. However the width of the street is in dispute. Ex. D-2 denotes that the width of the street is 8 feet 6 inches near the house of Richhpal and the learned trial court has rightly granted relief to the plaintiff to that extent. This width is hardly sufficient to pass the camel cart or a heavy

vehicle and thus there is no infirmity in the findings of the learned trial court, The findings of the learned trial court on issues Nos. 1,2,3 and 10 are hereby affirmed.”

15 Once the finding of facts has been concurrently recorded by both the Courts that there has been an encroachment on the passage, in the absence of any subsisting right, claim or title on the said passage, there can be no justification for continuing with an encroachment upon the passage, merely on the basis of the long duration for which such unauthorized encroachment has been enjoyed by the appellant-defendant due to pendency of dispute.

16 There is no reference to any other evidence on the basis whereof, the findings recorded by the Courts can be said to be unsustainable or perverse.

17 No questions of law much less substantial questions of law arise for determination in the present appeal exist.

18 The present appeal is accordingly dismissed. The judgment and decree dated 31.01.1992 passed by the Additional Senior Sub Judge, Charkhi Dadri as well as the judgment and decree dated 22.05.1993 passed by the Additional District Judge, Bhiwani, are affirmed.

19 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

April 23, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

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