

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

SAO-18-2018 (O&M)
Date of decision: 27.05.2024

KRISHAN CHAND

..Appellant

Versus

RAM KISHAN @ BHANGI

..Respondent

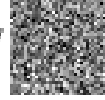
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.C. Shahpuri, Advocate
for the appellant.

Mr. Ajay Chauhan, Advocate
for Mr. Diwan S. Adlakha, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

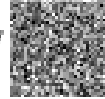
1. This second appeal against First Appellate Court's order remitting the case back to the trial Court for fresh decision has been filed by the plaintiff. The plaintiff filed a suit for grant of decree of permanent injunction restraining the defendants from interfering in his actual, peaceful and physical possession with respect to the property marked with letters 'ABCD' in the layout plan, which was attached with the suit. He claims that he is owner in possession of the suit property for the last 10 years as the same is located within the 'abadi deh' (residential area) of the village. The defendant while contesting the suit asserted that a wrong layout plan has been produced and the suit property is in fact a passage/street leading to the house of the defendant.



2. During the pendency of the suit, a local commissioner was appointed, who submitted his report. The trial Court decreed the plaintiff's suit while restraining the defendant from interfering in his actual, peaceful and physical possession of the suit property.

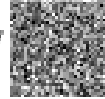
3. The First Appellate Court after reappreciating the evidence, recorded the following findings:-

"9. It will be pertinent to mention, at the out set, that the learned lower court has laid a great emphasis on the report of the local commission. The naksha abadi and the field book have not even been discussed. In his report, the local commission has shown the suit property as ABCDEF. In the North of the portion AB, he has depicted the house of Panch Ram. In the North of the property in question, he has shown agricultural land of the plaintiff. In the East, the house and the agricultural land of the defendant have been shown while in the West, he has shown the street. He has reported that neither the house of Panch Ram nor the house of the defendant have any opening towards the suit property. According to him, the house of the defendant has opening towards North which has access from the street Mark-X. Since he did not notice any foot mark etc. and there was growth of Kikkar and eucalyptus trees in the portion ABEF, he reported that the property in question is not a passage or part of the passage. However, if one compares the site plan Ex.P4 prepared by the local commission with the naksha abadi Mark-A, there appears some confusion. In this map is read alongwith field book, it will be clear that in the East of property No.106 owned by the plaintiff (it exists in the name of the father of the plaintiff), there is property bearing No.105 owned by Phool Chand. In the North of properties No.105 and 106, there is a street bearing No.121. In the North of the street No.121, there is property No.103 owned by Panch Ram. In the East of properties No.121 and 103, there is property No.104 which is owned by the defendant. In the West of properties No.106 and 121, there is main street. Street No.121 connects this main street. If once goes by the report and the site plan prepared by the local commission, there would be no street which, as per the report, bears No.121. Instead of asking for a clarification from the plaintiff about the existence of street bearing No.121 and calling for report from a revenue officer, the learned lower court appears to have rejected the objections of the defendant with a stroke of pen that if he



had any grudge, he could have applied for appointment of fresh commission. This, to my mind, is not the right approach. Even if the naksha abadi and the field book had not been formally proved, the court could have asked for the authentic copies thereof for the simple reason that public property was in question. Although, the dispute was between two individuals yet, it was the duty of the court to ensure that the fate of public property was not decided without calling for the proper record or without impleading Gram Panchayat as party so as to give it an opportunity to explain the position. It appears that inaction on part of the Gram Panchayat to take interest in the proceedings was taken as a circumstance in favour of the plaintiff. The approach is flawed. Once it was pleaded by the defendant that the property in dispute was part of public street, it was the bounden duty of the learned lower court to have impleaded the Gram Panchayat. No doubt it was a case for permanent injunction simpliciter but, in the given circumstances when the court was to decide as to whether the property was a street or not, the presence of Gram Panchayat was necessary. It is reiterated that the fate of public property could not have been decided in a lis between the two individuals in the premise that it was simply a suit for permanent injunction wherein the question of title was not involved. Therefore, instead of reversing the findings of the learned lower court issuewise, the judgment/decreed is set aside. The matter is remanded to the learned lower court with a direction to implead the Gram Panchayat as a party and then to decide the matter afresh. It is made clear that if the Gram Panchayat does not opt to contest and for some reasons remains away, the learned lower court shall make endeavour to get the field book and naksha abadi formally proved and then to decide the matter. The parties are directed to appear before the learned lower court on 19.01.2018. After due compliance, the appeal file be consigned to the records and lower court record be sent back alongwith copy of this judgment.”

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.
5. The learned counsel representing the appellant submits that a simpliciter suit for permanent injunction was filed and the plaintiff is in settled possession of the property for the last 35 years. He further submits that the report of the local commissioner is required to be accepted



particularly when the defendant failed to prove '*naksha abadi*' and the field book. He further submits that as per the deposition of DW-3 Sh. Vinod Kumar, S.E.P.O in the office of Block Development and Panchayat Officer, the Court has recorded that there is no evidence that the street in question belongs to the Panchayat.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. As has been correctly observed by the First Appellate Court, the substance of dispute between the parties is a public street, which vests in the Gram Panchayat. Hence, the Gram Panchayat was a necessary party to the suit in order to determine the existence of the street. Moreover, the First Appellate Court has found that in absence of complete evidence, there is some amount of gray area, which is required to be clarified by the Panchayat. Furthermore, as per the report of the local commissioner, there would be no street, whereas, a perusal of '*naksha abadi*' and field book shows about the existence of the street bearing No.121. In these circumstances, the First Appellate Court has remitted the matter back to the trial Court.

8. Moreover, the deposition of DW-3, who is an official from the office of Block Development and Panchayat Officer is not a good substitute for impleading the Gram Panchayat as a party particularly when the management of public street would vest in Gram Panchayat.

9. Under XLI Rule 23A of the Code of Civil Procedure, 1908, the Appellate Court can remit the matter back to the Court below if the findings of the Court below are set aside and a re-trial is considered necessary. In the facts of this case, this Court is of the considered opinion that the First Appellate Court has arrived at a correct conclusion.



- 10. Hence, no ground to interfere is made out.
- 11. Dismissed accordingly.
- 12. All the pending miscellaneous applications, if any, are also disposed of.

May 27th, 2024

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(ANIL KSHETARPAL)
JUDGE

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