



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

RSA-3239-2019 (O&M)

Date of Decision:-**29.08.2024**

AJMER SINGH (DECEASED) THROUGH LRs

... Appellant

Versus

PALA RAM (DECEASED) THROUGH LRs AND ORS.

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. R.K. Singla, Advocate
for the appellant.

RITU TAGORE, J. (Oral)

1. Being aggrieved by the concurrent findings returned against him, appellant-plaintiff (through his LRs), has preferred this Regular Second Appeal against the impugned judgment dated 06.09.2018, passed by learned Additional District Judge, Ambala affirming and upholding the judgment dated 28.09.2015, passed by learned Civil Judge (Junior Division), Ambala, whereby suit of the appellant for permanent injunction restraining defendants or their agents from interfering in the suit property, has been dismissed.

2. For easy reference, the parties to the *lis*, hereinafter shall be referred to by their original status in the suit.

3. For proper adjudication of the matter, it is desirable to go through the facts of the case.



4. Ajmer Singh, the plaintiff (since deceased, now represented by his LRs), instituted a suit for permanent injunction against defendants with averments that his father Balak Ram, purchased a plot bearing No.14-A, measuring 4292 square feet, situated in Abadi Deh of Village Hamidpur, as detailed in the site plan and with the boundaries as detailed in the head note of the plaint, in open auction. The sale certificate dated 05.04.1971 was issued in favour of the purchaser and possession of the plot was accordingly delivered to the purchaser.

5. The plaintiff, further maintained that his father Balak Ram, partitioned the plot No.14-A between his sons. The plaintiff, thereafter raised the construction of his house, as detailed in the site plan, attached with the plaint, marked with letters ABCD on the portion, which fell to his share. He has affixed a gate in the West-North corner of his house by keeping sufficient open space for keeping his agricultural implements and for parking tractor etc. The plaintiff asserted that houses of the defendants are in the North-Eastern side of his house. They have no concern or interest in any part of his house, marked with letters ABCD in the site plan, but threaten to use the said open place for approaching their houses; although they have separate passage to approach their houses. It is claimed that the defendants have refused to pay any heed to his repeated requests not to interfere in his ownership and possession of his house including the open space in North of his house, compelling him to file the suit.

6. Upon notice from the learned trial Court, defendants appeared and filed their written statement, pleading that there are throughfares on the



northern and western side of the house of the plaintiff, which vests in Gram Panchayat. The suit is bad for non-joinder of the necessary party i.e. Gram Panchayat. They further alleged that plaintiff had affixed a small gate in the common passage, illegally and denied that plaintiff had left any open space towards the street. Defendants assert that plaintiff has no right to park his tractor trolley in the throughfare, which leads up to village pond and is used by the villagers. It is claimed that open space is a part of throughfare and not part or portion of plot No.14-A. By denying the assertions of the plaintiff, pleaded for dismissal of the suit for lacking merits.

7. Plaintiff filed replication and denied the assertions of the defendants. Since the parties were at variance, the learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a relief of permanent injunction as prayed for by him? OPP.
2. Whether the plaintiff has no locus-standi and cause of action to file and maintain the present suit? OPD.
3. Whether the plaintiff is stopped by his act and conduct from filing the present suit? OPD.
4. Relief.

8. In support of their case, parties led the evidence, as detailed in the judgment of learned trial Court. The learned trial Court on appraisal of evidence held that plaintiff failed to substantiate his case. The learned Appellate Court also held that plaintiff failed to establish that disputed portion falling on norther side of his house, is a part of his house.



Accordingly dismissed his appeal. Dissatisfied with the concurrent findings appearing against him, the plaintiff through his LRs, filed this regular second appeal.

9. Learned counsel for the plaintiff/appellant submits that findings of the learned Courts below are result of misreading of the evidence and are not sustainable in the eyes of law. Learned Courts below fell in error in deciding issue No.1 against the plaintiff, whereas he led ample evidence to prove that he is the owner of the disputed place, left open by plaintiff, in the north of his house, for keeping his agricultural equipments and parking tractor etc. Learned counsel submits that learned Courts below wrongly held that site plans (Ex.P-1 and Ex.P-22) do not match and also erred in holding that *katcha* portion existing in the North of his house is a common passage and vest in Gram Panchayat. A prayer is made to reappraise the evidence and appeal should be allowed. In support of his arguments, learned counsel for the appellant placed reliance on **Municipal Corporation of Greater Mumbai and Others vs. Kohinoor CTNL Infrastructure Company Private Limited and Another, 2014(4) SCC 538.**

10. I have heard learned counsel for the appellant and have gone through the paper-book with his valuable assistance.

11. It is settled position of law that plaintiff is required to present cogent, reliable and admissible evidence in order to earn the relief as prayed for. The plaintiff brought the suit with material assertions that open portion shown in northern side of his house, in the site plan Ex P-22, is a part of his plot No.14-A and is not a part of the common passage. The onus was upon



the plaintiff to establish this material fact. He was required to present positive and reliable evidence that open place is a part of the plot No.14-A. However, except placing on record the sale certificate (Ex.P-2) indicating plot No.14-A was allotted to his father, site plans (Ex.P-1 and Ex.P-22) and his own testimonial account as PW-2, the plaintiff led no other definite evidence to establish that disputed portion is a part of plot No.14-A. The dimensions given in the site plan (Ex. P-1) of plot No.14-A do not tally with the dimensions given in the site plan (Ex.P-22) relied by the plaintiff and forming the part of the plaint. Learned Courts rightly observed this infirmity in the evidence of the plaintiff. Further, the plaintiff failed to prove the site plan (Ex.P-22) by examining the draftsman, who prepared the same. In the absence of its due proof, the site plan cannot be read into the evidence. Further, in the absence of the testimony of author of the site plan (Ex.P-22), it is difficult to hold that on what basis, the site plan (Ex.P-22) was prepared and how the dimensions mentioned therein were recorded. Therefore, site plan (Ex.P-22) cannot be read in favor of the plaintiff so to hold that the disputed open space in the North of his house is a part of plot No.14-A. No other evidence like demarcation report is placed on record to establish that disputed open space is a part of his plot No. 14-A and not a part of common passage. No official from Gram Panchayat was examined to establish that disputed place is neither the part of common passage nor vest in Gram Panchayat, or maintained by the Gram Panchayat.

12. Further, plaintiff during cross-examination, admitted that disputed place mingles with common passage as delineated with letters AD



in the site plan (Ex.P-22) and suggestion given by plaintiff to DW-1 that disputed place is a *Kutchi Gali* and not *Pucci Gali*, goes to probablize the version of the defendant that disputed portion is a common passage and not part of plot No.14-A. Infact, the plaintiff failed to discharge the burden of proof based on the preponderance of probabilities to establish that the disputed portion is a part of his house rather than a passage, as he did not present any cogent and positive evidence in this regard. Moreover the contention of the learned counsel for the appellant/plaintiff that his application for appointment of local commissioner was not decided by the learned Appellate Court is also contrary to the record as the said application was dismissed by learned Appellate Court vide order dated 06.09.2018.

13. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity. The facts of the case titled as **Municipal Corporation of Greater Mumbai's** case (supra) are distinguishable. In the referenced case, appeal was preferred against the order passed in the writ petition quashing the notices/orders issued by the authorities.

14. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

15. No other point urged.



16. Resultantly, there is no merit in the appeal and is, hereby, dismissed.
17. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

29.08.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No