



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

107

RSA-228-2019 (O&M)
Date of Decision : 13.08.2024

JASVIR SINGH

.... Appellant

VERSUS

SANJEEV SINGH

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Duhan, Advocate for the appellant.

Mr. J.S. Moudgil, Advocate for the caveator-respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the defendant-appellant challenging concurrent findings of facts returned by the Trial Court vide judgment and decree dated 28.11.2017 and the First Appellate Court vide judgment and decree dated 29.05.2018.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for permanent injunction for restraining the defendant-appellant, his agents, servants, attorneys, partymen from interfering in the use of common passage/street and for restraining the defendant-appellant from encroaching and blocking and creating any hindrance in the common passage. It is also pleaded in the plaint that on obtaining a copy of the order passed by this Court in RSA-1324-1982 it had come to the knowledge of the plaintiff-respondent that Mansha Singh, Teja Singh and Natha Singh sons of Lehna Singh had filed a suit for permanent injunction against Net Ram son of Dila Ram from interfering in the street

shown as ABCD in the site plan and the said matter was subsequently compromised. Net Ram was grandfather of the defendant-appellant and it was agreed that the street shown as ABCD in the site plan was private property belonging to Mansha Singh and others and it was agreed that the defendant-appellant therein shall not interfere in the use of the same. As per the compromise the street shown as DFGH in the site plan of the present suit was a thorough fare and not personal property of the defendant-appellant. The street in question is a thorough fare used by the parties to the suit. However, since the defendant-appellant had started interfering, the suit was filed.

3. In the written statement the defendant-appellant raised preliminary objections regarding maintainability, suit being false and frivolous and that the plaintiff-respondent had not approached the Court with clean hands. On merits it was averred that the house of the defendant-appellant and the plaintiff-respondent are having approach from two sides and that the main gate of the house of the plaintiff-respondent is towards street EFGH and that the plaintiff-respondent had produced a wrong site plan with an intention to grab the property of the defendant-appellant. It was further averred that Mansha Singh and Pritam Kaur entered into a compromise before the Hon'ble High Court in which they have surrendered their rights of use and occupation in favour of the defendant-appellant and hence the defendant-appellant had been using the street EFGH as his private property. It was denied that that street EFGH was public property.

4. Replication was filed denying the contents of the written statement and reiterating those made in the plaint.

5. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether suit is not maintainable ? OPD
3. Whether plaintiff has no cause of action to file the present suit ? OPD
4. Whether the suit is bad for non-joinder of necessary parties ? OPD
5. Whether the plaintiff has not come to Court with clean hands ? OPD
6. Relief.

6. The Trial Court vide judgment and decree dated 28.11.2017 decreed the suit of the plaintiff-respondent restraining the defendant-appellant from interfering in the use of common passage/street by the plaintiff-respondent. Aggrieved by the same, an appeal was preferred before the First Appellate Court by the defendant-appellant which appeal was dismissed vide judgment and decree dated 29.05.2018. Hence, the present regular second appeal by the defendant-appellant.

7. Learned counsel for the defendant-appellant would contend that the passage EFGH was the private and personal property of the defendant-appellant but still the suit has erroneously been decreed by the Courts. It is

urged that both the Courts have erred in decreeing the suit of the plaintiff-respondent which infact deserved to be dismissed.

8. *Per contra*, learned counsel for the caveator plaintiff-respondent would contend that the defendant-appellant had in his written statement as well as cross-examination admitted that the street was being used from time immemorial for the purpose of crossing his tractor-trolley for the last 20-30 years with the consent of the plaintiff-respondent.

9. Heard.

10. In the present case the defendant-appellant had taken a stand that the passage in dispute was personal and private property of the defendant-appellant. However, he failed to prove the same by leading any cogent evidence. Infact, in his cross-examination the defendant-appellant admitted that he had not instituted any suit based on title qua the suit property. Rather, in his written statement the defendant-appellant had admitted that the suit property was common land belonging to the Government. Even before this Court learned counsel for the defendant-appellant has failed to point out any evidence on the record to show that the passage in dispute was private and personal property of the defendant-appellant. No other argument has been raised.

11. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.08.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*