

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2044-1993 (O/M)

Reserved on : 16.12.2024

Date of decision : 12.03.2025

Nirmal Singh

..... Appellant

Versus

Lakshmi Devi through her LRs

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Armaan Saggar, Advocate
for appellant.

Mr. Arpan Sabharwal, Advocate
for LR (ii) of respondent.

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HARSH BUNGER, J.

1. For convenience, the parties herein are being addressed as per their status in the original suit.

2. The present Regular Second Appeal has been filed by defendant (Nirmal Singh) against judgment and decree dated 20.04.1993, passed by learned Additional District Judge, Ludhiana, whereby he has set aside judgment and decree dated 15.02.1991, passed by learned Sub Judge First Class, Ludhiana and has decreed the suit of the plaintiff (present respondent) for mandatory injunction with a further direction to demolish the construction raised by defendant (Nirmal Singh) on the disputed site and restore the same as a street. Another direction has been issued for restraining the defendant (Nirmal Singh) from making any construction or encroachment on the disputed street, otherwise than in

due course of law. Vide the same judgment dated 20.04.1993, learned Additional District Judge, Ludhiana has also dismissed the cross objections filed by defendant (Nirmal Singh).

2. Briefly, plaintiff (Lakshmi Devi) filed a suit against defendant (Nirmal Singh), seeking permanent injunction restraining the defendant (Nirmal Singh) from raising any construction on the street, as described in the plaint on the plea that she owns House No. B-XVII-1945 and on the southern side of the said house, there is a street, in which three doors, three windows and three ventilators of the plaintiff open. It is the pleaded case of the plaintiff that she had purchased the land, on which the house is constructed, from Khushi Ram and others, who had purchased the same from one Sant Singh etc. and the aforesaid street was in existence, since that time. It was alleged that on 14.10.1987, defendant alongwith some other persons came to the disputed street, collected building material there and threatened to raise construction on the disputed street. Accordingly, the suit was filed.

2.1 Upon notice, defendant appeared in the suit and contested the claim of plaintiff by filing his written statement, inter alia, on the plea that there was no street, rather there is a house of defendant, which has been wrongly described by plaintiff as a street. It was stated that the doors, windows and ventilators of the plaintiff open towards the house of defendant and that there is a boundary wall and house, which already stand constructed and, therefore, there was no question of raising any construction. It was further stated that the plaintiff has not described the

boundary wall of the street in dispute correctly. Accordingly, prayer for dismissal of the suit was made.

2.2 From the pleading of the parties, the trial Court framed the following issues :-

“1) Whether the plaintiff is entitled to the injunction prayed for ? OPP

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

3) Relief.”

2.3 The parties led their respective evidence in support of their respective claims. The concerned trial Court, vide judgment and decree dated 15.02.1991, dismissed the suit of plaintiff by holding as under :-

“10) Admittedly there is street on Eastern side of the house of plaintiff as well as the property in dispute. The allegations of the plaintiff are that towards Southern side of his house there is also street. Undisputedly the doors, windows and ventilators of the plaintiff open in the site in dispute and the Local Commissioner also found that doors, windows and ventilators of the plaintiff open towards the house of the defendant. The plaintiff has purchased his house from Khushi Ram vide sale deed dated 8.8.1961. Khushi Ram has purchased this property from Sant Singh and others vide sale deed dated 5.6.1952. In both these sale deeds towards Southern side of the house of the plaintiff, a street has been shown. However, it is pertinent to note that the width of this street has not been mentioned in these sale deeds and only length has been shown. The property purchased by the plaintiff comprised of Khasra Numbers 874 to 877 and was owned by Bant Singh and others. Defendant has also purchased the plot comprising of Khasra Number 874 to 877 from Bant Singh, one of the co-sharer.

But the plaintiff has also purchased his house from Khushi Ram and others, who had purchased the same from Bant Singh and others. The sale deed in favour of the defendant is dated 18.2.1957 i.e. after the sale deed in favour of Khushi Ram and in the site plan attached with this sale deed site of Khushi Ram has been shown towards Northern side of the site purchased by the father of the defendant. It is thus clear from the perusal of sale deed in favour of plaintiff as well as the defendant that the plot purchased by father of the defendant and the house of the plaintiff adjoin each other. In this sale deed dated 8.2.1957 no street is shown towards northern side i.e., towards the house of the plaintiff. Therefore, had there been street towards southern side of the house of the plaintiff, it would have been shown in the site plan of plot purchased by the father of the defendant. The fact that width of the street is not mentioned in the sale deeds vide which the plaintiff purchased the plot of his house also goes along way to show that there was actually no street but an open place. As already stated above, the defendant has also purchased the plot in dispute from one of the co-sharers from whom the predecessor-in-interest of the plaintiff purchased. The Khasra numbers of both the plots are same. It is, therefore, clear that the property in dispute was plot which was purchased by father of the defendant but since there was no construction on it and it adjoined the house of the plaintiff, the people started using it as street. Admittedly the doors, windows and ventilators of the plaintiff open in the property in dispute and no objection was ever raised by the defendant when the plaintiff opened these doors towards the site in dispute. This fact also shows that the property in dispute was being used as street. All the PWs produced by the plaintiff have stated unanimously that the property in dispute is used as street. Therefore, the property in dispute has to be held to be street. Particularly when there is no

room of the defendant in it. Even the Local Commissioner did not find any room constructed in the property in dispute. However at present the street in dispute does not exist because the defendant has encroached upon it. From the report of Local Commissioner, it is clear that there is existence wall at a distance of one foot from the house of plaintiff and this wall is 4 to 7 feet high. Even the PWs admitted the existence of this wall. Thakar Singh, attorney of the plaintiff himself admitted in the examination-in-chief that the defendant has constructed wall 2 feet high during the pendency of the suit. Santokh Singh, PW-3 also admitted that there was wall 2 feet high which has been constructed by Nirmal Singh, defendant. Similarly Ashwani Kumar, PW admitted that there is wall of the defendant towards the house of the plaintiff and defendant has closed the entry of the plaintiff by constructing this wall. Gian Singh, PW6 also admitted in the cross-examination that there was wall at point A and B as shown in site plan Ex.P.3 and the street was closed at the spot. He further admitted that he could not say whether the wall was 8 feet high. PW-7, Kuldeep Rai also admitted that at point A and B in site plan Ex.P.3, the street was closed.

11. As already discussed above, Shri Gurdeep Singh Grewal, who was appointed Local Commissioner in the case found that there existed wall towards the house of the plaintiff at distance of 1 foot from her house. The report and site plan prepared by the Local Commissioner also show that the defendant has constructed boundary wall over the property in dispute. It is not the case of the plaintiff that the defendants raised construction after the grant of ad-interim injunction. Rather the learned counsel for the plaintiff alleged that there was no construction on the site in dispute. I, however, found myself unable to agree with the learned counsel for the plaintiff because, as already discussed above,

almost all the P.Ws. and attorney of the plaintiff himself, admitted the existence of the wall at the spot, though PWs denied the height of the wall at the spot. Therefore, the fact remains that there is boundary wall of the defendant over the property in dispute meaning thereby that the defendant is in possession of the property in dispute and, therefore, the suit for injunction has become infructuous. Thus the plaintiff is not entitled to injunction prayed for. The issue is decided against the plaintiff.”

2.4 Feeling dis-satisfied with the aforesaid judgment and decree dated 15.02.1991, plaintiff preferred an appeal before learned Additional District Judge, Ludhiana.

2.5 It appears that defendant also submitted his cross objections before learned Additional District Judge, Ludhiana.

2.6 The first appellate Court, vide judgment and decree dated 20.04.1993, set aside the judgment and decree dated 15.02.1991, passed by the trial Court and decreed the suit filed by the plaintiff and further dismissed the cross objections submitted by defendant. Hence, the present regular second appeal has been filed by defendant before this Court.

3. Heard.

4. A perusal of the judgment and decree passed by trial Court would show that although the trial Court has held that the disputed site was a street, however, it went on to observe that since all the witnesses (PWs) as well as attorney of the plaintiff himself admitted existence of a wall at the spot, it was concluded that defendant was in possession of the suit property, therefore, the suit for injunction has become infructuous.

5. The lower appellate Court, after considering the oral as well as documentary evidence available on record, decreed the suit of the plaintiff by holding as under :-

“22. The report of Shri G.S. Grewal, Ex.DW-1/1 and that Shri Naresh Yadav belie the case of the respondent that he has constructed a room on the disputed site. All that these reports show is that there is small boundary wall on some sides of the disputed side. Besides this these reports also show that in between the house and boundary of the appellant and the disputed site, there is still some strip of vacant land, may be 1' or 2' in width, which is still lying vacant and that three doors, three windows and three ventilators of the house of the appellant open towards it. Thus this evidence, and the evidence produced by the appellant appears to be materially consistent with the disputed site being a (public) street.

23. It is significant to note that three doors, three windows and three ventilators of the house of the appellant have been opening towards the disputed site for many many years. Tongue in cheek, it is pleaded by the respondent that these have been opening into his house. But neither he nor his predecessors in interest objected to these orifices being opened towards the disputed site. They did not take any legal action for closure of these orifices nor they resisted when these were opened. This conduct of the respondent and his predecessors in interest is inconsistent with the plea of the respondent that these orifices open in his house, and is consistent with the case of the appellant that the disputed site is a street.

24. With his usual perspicacity, it is submitted by the learned counsel for the respondent that in the plan filed with the plaint, the appellant has given the length of the disputed street as 33 feet while in the sale deed Ex.P.2 and Ex.PA, the

length of this street was 34 feet. Admittedly, the sale deed Ex.P.2 had been executed about 41 years ago, and the sale deed Ex.PA had been executed about 32 years ago. Since then there has been a sea-change in the topography of the Ludhiana Urban conglomerate and, therefore, this minor discrepancy of one feet, or so, in the length, would not be sufficient to throw out the case of the appellant lock, stock and barrel. Thus on the totality of the material on the record, the learned trial Court was perhaps justified in concluding in para No. 10 of the impugned judgment that the property in dispute was a street.

25. However, it appears that from this point onwards the learned trial Court fell into error, while holding that at the time of the delivery of the judgment of the learned trial Court, the street did not exist on the spot, because the respondent had encroached upon it. He relied upon the report of the Local Commissioner that patches of boundary wall existed around the disputed site. But in para No. 11 of the impugned judgment, the learned trial Court observed that it was not the case of the appellant that the respondent had raised construction after grant of ad-interim injunction. One wonders about the correctness of these observations. Even the learned trial Court in para No. 10 of the impugned judgment himself observed that PW-1 had stated that the respondent had constructed two feet high wall during the pendency of the suit. A similar statement was made by Shri Santokh Singh, PW-3. But it appears that by the time, the learned trial Court reached para No. 11 of the impugned judgment, it had lost track of the observations made in para No. 10 ibid. Thus, this part of his judgment stands vitiated.

26. It is common human trait to blow down and understated the case of the opposite party. Therefore, when PW-1 stated that the respondent had raised two feet high wall during the pendency of the suit, he was perhaps

indulging in this human weakness. But on the totality of the evidence of PW-1 and PW-3 it may be safely concluded that the case of the appellant is that the respondent had constructed the boundary wall during the pendency of the suit. This appears to be substantially true and correct when we bear in mind that the respondent has temerity to assert that he has also constructed a room in the disputed site, which fact he has failed to prove. Thus it is held as proved that the boundary wall on the disputed site has been constructed by the respondent during the pendency of this suit.

27. The suit had been filed on 14.10.1987 and the injunction ad-interim had been granted by the learned trial Court on 15.10.1987. As demonstrated above, the patches of the disputed boundary wall have been constructed by the respondent during the pendency of the suit. It is not alleged by the respondent that he had constructed them on 14.10.1987. Therefore, it may be safely deduced that the disputed patches of the boundary wall have been constructed by the respondent around the disputed site after the issue of injunction ad-interim.

28. It was ruled in 1997(1) P.L.R. 662, SMT. SALOCHANA DEVI VERSUS SITA RAM MALIK, that if the respondent encroached upon the disputed passage after the grant of injunction ad-interim, the plaintiff could not be non-suited on the ground that no prayer for mandatory injunction was made in the plaint.

29. In A.I.R. 1988 PUNJAB AND HARYANA 176, SMT. MAYA DEVI AND OTHERS VERSUS MEHRIA GRAM DALL MILL HISSAR AND OTHERS, the plaintiff had filed a suit for prohibitory injunction against the respondents, taking forcible possession of the property in dispute. He was granted injunction ad-interim. But the defendant forcibly dispossessed the plaintiff inspite of ad-interim injunction. In

these circumstances, it was ruled that the court could grant relief of possession in view of subsequent events.

30. The ratio of the authorities cited above applies to the case in hand with full justification. Therefore, it is held that in the nature and circumstances of this case, the plaintiff-appellant is entitled to the mandatory injunction directing the respondents to remove the construction of the patches of the boundary wall constructed around the disputed street, after the grant of injunction ad-interim, to the appellant. Therefore, the findings of the learned trial Court on issue No. 1 are reversed and this issue is decided for the appellant in the manner as just indicated.

31. No other point was urged by the learned counsel for the parties at the bar.

32. In the result, this appeal is bound to succeed. So it is allowed with costs throughout. The impugned judgment and decree of the learned trial Court is set aside. The appellant is granted mandatory injunction against the respondent and the latter is directed to demolish the construction raised by him on the disputed site, within two months, and restore it as a street. The respondent is further restrained from making any construction or encroachment on the disputed street, otherwise than in due course of law. Cross-objections of the respondent are dismissed. Counsel fee Rs. 1,000/-. Decree be prepared.”

6. I have carefully gone through the findings/observations made by the Trial Court as well as the first appellate Court. Upon considering the totality of circumstances, I am of considered view that the findings of the first appellate Court are based upon appreciation of facts/pleadings as well as the evidence on record and I see no illegality or perversity in its findings. Furthermore, no question of law, much less a substantial

question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

7. Resultantly, the present appeal is dismissed, being bereft of any merit.

8. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

12.03.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No