



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

RSA No.1618 of 1991 (O&M)

Reserved on : 16.01.2025

Pronounced on: 30.01.2025

Des Raj (deceased) through LR's

....Appellant

V/s

Nand Kishore (since deceased) through LR's and anotherRespondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rakesh Gupta, Advocate, for the appellant.

Mr. Surinder Garg, Advocate, for respondent No.1(iii).

None for respondent No.1(i) 1(ii) and 1(iv).

Respondent No.2 proceeded against ex parte
vide order dated 15.04.2024.

VIKRAM AGGARWAL, J.

This is plaintiff's appeal filed against the judgment and decree dated 02.04.1991 passed by the Court of learned Addl. District Judge, Bathinda, allowing the appeal filed by the defendants against the judgment and decree dated 18.11.1988 passed by the Court of learned Sub-Judge, Ist Class, Mansa, vide which the suit filed by the plaintiff for permanent injunction was decreed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. Plaintiff-Des Raj instituted a suit for permanent injunction restraining the defendants Nand Kishore and Tarsem Chand from closing the street Marked "EF" (for short the "property in dispute") in the site plan by constructing a wall. Parties to the *lis* are the descendants of one Godu Mal, the plaintiff-Des Raj being the son of Khilo Ram son of Godu Mal and



defendants Nand Kishore and Tarsem Chand being the sons of Gurnam Mal son of Godu Mal. The case set up by the plaintiff was that, one factory was stated to be in the name of Godu Mal Khilo Ram in Mansa. It was claimed that on the intervention of the Panchayat, a partition had been effected between the sons of Godu Mal. Foundations were laid and streets were carved out and a site plan dated 28.08.1974 was prepared. The details, as per which different portions were allocated, were given in the plaint. It was averred that between all 4 co-sharers, streets measuring 12 feet each from East to West were carved out. One street was going from the center of the portion of Gurnam Mal, father of the defendants and Des Raj, Babu Ram etc. from North to South towards the road of the village and joining the same to the road of the village. Another street measuring 12 feet was carved out towards the West of the plots of the plaintiff, defendants and Babu Ram from North to South. The site plan was prepared after carving out these streets and the site plan had been signed by Gurnam Mal (father of the defendants) and the plaintiff. A photostat copy of the same was also annexed with the plaint.

4. It was further claimed that all parties had incurred equal expenditure and had got the foundations filled up and thereafter, each party had raised its own construction. It was alleged that the defendants were forcibly trying to construct a wall across the street between the portion of the two sides. It was mentioned that the place at which the defendants were trying to construct a wall was shown in 'green' in the site plan. They were asked not to do so but they refused as a result of which the suit was filed.

5. The suit was resisted by the defendants. In the written statement, certain preliminary objections were raised. It was claimed that



adverse possession as they were owners in possession of the same for the last more than 12 years. It was stated that Mahesh Kumar had already raised construction at the spot and a tap was also installed. It was averred that Mahesh Kumar had constructed a wall at the spot which had been demolished with a view to construct a new wall but after demolition, he started raising construction and the plaintiff started raising a dispute. It was also averred that the suit was barred under Order 2 Rule 2 CPC and that the plaint was vague. It was claimed that the suit property had been given by Gurnam Mal to his grandson Mahesh Kumar in the family partition. Preliminary objections of non-joinder of necessary parties and cause of action were also raised. On merits, a similar stand was taken. The contents of para No.1 of the plaint were admitted. It was, however, stated that after the site plan had been prepared, an oral settlement had been arrived at between the parties that certain streets would be included within the property and in terms of the same, the streets had been included by the parties in their properties. Mahesh Kumar had also constructed a wall in the area which came to his share and this fact had been concealed by the plaintiff.

6. Replication was filed by the plaintiff denying the averments made in the written statement and reiterating those made in the plaint.

7. From the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether there is a lane in existence as alleged?OPPD

2. Whether the plaintiff is entitled to seek relief of injunction as prayed for?OPP

3. Whether the suit of the plaintiff is false and vexatious to his knowledge and the defendants are entitled to special costs if so how much?OPD

4. Whether the plaintiff has got no cause of action for filing the present suit?OPD

5. Whether the suit is vague?OPD



6. ***Whether the suit is barred under Order 2 Rule 2 CPC?OPD***
7. ***Whether the suit is not maintainable in the present form?OPD***
8. ***Whether the suit is bad for non-joinder and mis-joinder of the parties?OPD***
9. ***Relief.***

8. Parties led their respective evidence. The trial Court decreed the suit filed by the plaintiff. However, the said judgment and decree was set aside by the first Appellate Court on the appeal filed by the defendants, leading to the filing of the present second appeal by the plaintiff.

9. Learned counsel for the parties were heard.

10. Mr. Rakesh Gupta, learned counsel representing the plaintiff submitted that the first Appellate court had erred in allowing the appeal filed by the defendants and dismissing the suit of the plaintiff. Learned counsel submitted that there was an admission in the written statement itself as regards the site plan and, therefore, the first Appellate Court erred in holding that the site plan was not proved in accordance with law. It was further submitted that the defendants had set up a plea which they were not able to prove and in view thereof, the suit filed by the plaintiff was rightly decreed by the trial Court. Learned counsel referred to the site plan (Ex.P1) and statements of PW1 (Des Raj) and DW1 (Nand Kishore). The judgments of both the Courts were also referred to in extenso and it was contended that the judgment and decree passed by the first Appellate Court is not sustainable.

11. *Per contra*, learned counsel representing respondent No.1(iii) submitted that there is no illegality in the judgment and decree passed by the first Appellate Court.

12. I have considered the submissions made by learned counsel for the parties and have perused the record.



13. The question which arises for consideration of this Court is as to whether the site plan (Ex.P1) was rightly construed/interpreted/gone into by the Courts below or not.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others***, (2016)6 SCC 157, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others***, (2019) 11 SCC 317 and ***Satender and others V/s Saroj and others***, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

Thus, wherever the issue relates to the construction of a document which is germane to the rights of the parties to the *lis*, it involves a question of law which falls within the scope of a regular second appeal. Therefore, this Court shall proceed to decide the present appeal without framing a substantial question of law.

15. The site plan was produced on record as Ex.P1. There was a clear cut admission in the written statement about the site plan. The contents of para No.1 of the plaint were admitted. It was stated that after the site plan had been prepared, an oral settlement had been arrived at between the parties that certain streets would be included within the property and in terms of the same, the streets had been included by the parties in their properties. Mahesh Kumar had also constructed a wall in the area which came to his share and this fact had been concealed by the plaintiff. This means that the



admitted and even the site plan was admitted because reference was made as per the site plan only and it was stated that afterwards, an oral settlement had been arrived at. Once the existence of the site plan had been admitted, then there was no need for the plaintiff to produce the person who had prepared the site plan. In any case, the same could not have been done because the site plan had been prepared at the time of partition. A bare perusal of the site plan (Ex.P1) shows that there are streets through and through the entire property and it appears that a very planned area was carved out separating out shares of each party with streets in between.

16. The defendants took up a plea that Mahesh Kumar had already constructed a wall across the relevant portion and it was in his ownership and possession. However, no evidence to prove this fact was led. Mahesh Kumar did not step into the witness box. No other person apart from the defendants deposed about the same. It appears that the stand was taken just with a view to create a defence that earlier a wall had been constructed which had been demolished and when a new wall was to be constructed, the plaintiff raised an objection. It has to be borne in mind that whatever has been pleaded has to be proved. The plaintiff succeeded in proving that he had pleaded not only by leading evidence but even on account of the admission by the defendants in the written statement.

17. The matter does not rest here. Nand Kishore-defendant No.1 appeared as DW1. In his examination-in-chief, he stated that Mahesh Kumar is the owner of the property in dispute and he got the same from his father, i.e. father of Nand Kishore i.e. Gurnam Mal in partition and that he constructed a wall and had also laid foundations and further that one hand-pump had also been installed. The existence of a passage was denied. He



(Ex.P1) was not the same site plan. He then stated that his father had constructed the wall and about 3 ½ years prior to the filing of the written statement, Mahesh Kumar demolished some portion of the wall with an intention to reconstruct the wall, upon which the suit was filed. However, he spilled the beans in the cross-examination. He admitted that the property in dispute was within the municipal limits. He, however, did not produce the writing or the deed of partition that he had referred to. He admitted that he had not produced Mahesh Kumar as a witness. He could not produce any approved site plan as regards the construction raised by Mahesh Kumar. He admitted that in the written statement, there was no objection as regards the site plan. He then stated that the site plan was not on the file when the written statement was filed. However, when confronted, he admitted that the site plan was there on the file with the plaintiff. He denied that he had admitted in the written statement that the plan produced was the correct plan but then stated that he had signed the written statement after admitting the same to be correct.

18. A cumulative examination of the pleadings and the evidence led by the parties clearly shows that a partition had been arrived at between the parties and other descendants of Godu Mal and the site plan (Ex.P1) duly depicted the partition. It showed the existence of streets also. Nobody would then have the right to close any street by raising construction. The plaintiff, it is clear, had proved his case by leading cogent evidence. Accordingly, the trial Court gave detailed findings on every issue but the first Appellate Court, set aside the said findings only on the ground that the person who had prepared the site plan had not stepped into the witness box. The sole findings recorded by the first Appellate Court are as under:-



Public Servant or purporting to be made by the Authority of the Central Govt. or any State Govt. It is further argued by the learned counsel for the appellant (defendant) that the Court cannot grant a decree where the subject matter i.e. identity or property claimed has not been established properly....

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In the circumstances explained above I hold that there is no street in existence as shown in the map Exh.P1 nor map Exh.P1 has been proved properly. As such this issue is decided against the plaintiff and in favour of the appellant (defendant No.1)."

19. In the considered opinion of this Court, the said findings are not sustainable in view of the discussion in the preceding paragraphs and that the findings recorded by the trial Court are legal and valid.

20. In view of aforementioned facts and circumstances, the present appeal is allowed. The judgment and decree dated 02.04.1991 passed by the Court of learned Addl. District Judge, Bathinda, allowing the appeal filed by the defendants is set aside and the judgment and decree dated 18.11.1988 passed by the Court of learned Sub-Judge, Ist Class, Mansa, vide which the suit filed by the plaintiff for permanent injunction was decreed, is upheld.

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

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 16.01.2025

Pronounced on: 30.01.2025

vcgarg

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No