

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-910-2022 (O&M)****Date of decision: 13.02.2025****Khubi Ram****...Appellant(s)****Vs.****Maman Singh deceased through his LRs and others ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vipun Pal Yadav, Advocate for
Mr. J.S.Sohal, Advocate for the appellant.

*********NIDHI GUPTA, J.**

The present appeal has been filed by the plaintiff against the concurrent judgments and decrees of the Id. Courts below, whereby the suit filed by the appellant/plaintiff for declaration and possession alongwith consequential relief, has been dismissed by both the courts below.

2. The brief facts of the case as pleaded in the plaint are that the plaintiff is owner in possession of property bearing Khewat No. 157/129, Khatoni No. 158, Rect. No. 48, Killa No. 21/8(0-3), 21/9(0-3), 22/1/2(0-2) and 22/1/3(0-2) total area measuring 10 Marla situated in village Bhakli, Tehsil Kosli, District Rewari. Said property was purchased by plaintiff vide sale deed Nos.276 and 279 both dated 01.08.1979 from ancestor of defendants No. 2 to 9, namely Shri Jagmal son of Ramnarayan. Said Jagmal



is no more hence defendants No. 2 to 9 are impleaded as his legal representatives. Mutation No. 1558 and 1559 were also sanctioned in favour of plaintiff. Deceased Jagmal was exclusive owner of land bearing Khewat No. 35, Khatoni No. 35, Rect. No. 20, Killa No. 18/2(4-6), Rect. No. 24, Killa No. 13(8-0), 14(8-0), 18(8-0), 23(7-7), Rect. No. 39, Killa No. 8/1(4-3), Rect. No. 48, Killa No. 21(8-0), 22/1(0-16), Rect. No. 17, Killa No. 19(8-0), Khasra No. 356 (1-0), 668(0-2) total land 57 Kanal 11 Marla. Jagmal had carved plots from above stated land and plaintiff was given specific portion of land bearing Khewat No. 35, Khatoni No. 35, Rect. No. 48, Killa No. 21(0-3) and Killa No. 22/1(0-2) vide sale deed No. 279 dated 01.08.1979 and depicted by blue colour in the site plan attached with plaint. Said property is marked as EFGH in the site plan. Jagmal had given a rasta/passage in the Southern side of the property as shown in yellow colour and fully described in paragraph No. 4 of the plaint (hereinafter referred to as "disputed rasta"). Defendant No. 1 taking undue advantage of plaintiff's absence, made illegal and unauthorized construction upon said disputed rasta in November 2011 as shown by letters ABCD in red colour in site plan. As plaintiff was old age person and suffering from heart disease, he could not come to village Bhakli to see his property. In 2011 when plaintiff came to village Bhakli he was shocked to see said illegal encroachment. When he approached defendant No. 1., he refused to remove the construction. When plaintiff approached Halqa Patwari, he came to know about sale deed No. 923 and its mutation No. 3144. Said sale deed is illegal because Jagmal had no right to execute



sale deed of disputed rasta in question in favour of defendant No. 1. With these pleadings, the suit was filed on 19.09.2013.

3. Upon notice, defendant No.1 appeared and resisted the suit *inter alia* pleading that defendant No.1 is owner in possession of property measuring 2 Marla as shown in green colour in the site plan attached with written statement. The said defendant had raised construction upon the said land of his house in the year 1984 and hence, revenue entries show it to be *Gair Mumkin Makan*. It was denied that plaintiff had purchased any property as described in para 1 of the plaint from ancestor of defendant. It was also denied that Jagmal was ancestor of defendant. It was also denied that specific portion was sold by Jagmal to plaintiff or any such rasta, as alleged by plaintiff was given to him. Even the site plan produced by the plaintiff was disputed. It was contended that the case of the plaintiff is based upon two sale deeds. However, the plaintiff had deliberately not produced sale deed No. 276 dated 01.08.1979. It was categorically stated that no rasta towards Southern side of property of the plaintiff was given; rather the said Southern side property belonged to Jagmal and this fact is specifically mentioned in sale deed No. 276 dated 01.08.1979. It was further pleaded that even the story of the plaintiff that he could not see his property for long time is false as plaintiff had made pucca house on his property in which he was living from long time. It was further contended that *Rasta Saare Aam* had been obstructed by some other person namely Basant son of Ram Kumar Lohiya as marked in the defendant's site plan as



the letters ABCD. Accordingly, dismissal of the suit was prayed for.

4. No replication was filed.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for a decree of declaration and possession against the defendants as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has concealed the material facts from the Court? OPD
4. Whether the plaintiff has estopped to file this suit by his own act and conduct? OPD
5. Whether the suit of plaintiff is time barred? OPD
6. Whether the suit of plaintiff is liable to be dismissed on account of non joinder of necessary party? OPD
7. Whether the plaintiff has no cause of action to file the present suit? OPD
8. Whether the plaintiff has no locus standi to file the present suit? OPD
9. Whether the suit of the plaintiff is liable to be dismissed under Order 7 Rule 11 CPC? OPD
10. Relief.

6. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided the issue No.1 against the plaintiff; issues No. 2,3,4,5,7 and 8 were decided in favour of the defendants; issues No. 6 and 9 were decided against the defendants; and the suit of the plaintiff was dismissed with costs vide judgment and decree dated 06.04.2017. The appeal filed by the plaintiff before the learned Additional



District Judge at Rewari was also dismissed vide judgment and decree dated 13.02.2020. Hence, the present second appeal.

7. Learned counsel for the appellant-plaintiff vehemently submits that the judgments of the Id. courts below are liable to be set aside being contrary to the actual position on spot. It is submitted that it was categorically mentioned in the sale deed in favour of the plaintiff that there was a rasta/passage in the southern side of the property sold to the plaintiff. It is submitted that it has been admitted by defendant No.1 in his cross examination that there is rasta on the western as well as southern side of the plot. Thus, the only dispute remained qua whether the encroachment in the said rasta was by defendant No.1, or by Basant as alleged by defendant No.1.

8. It is further submitted that the learned courts below have not considered the report of the local commission in which it was reflected that there was a rasta on the southern side. Property of the defendant and adjacent to the property of the defendant only on opening of width measuring 4 feet 5 inches is left.

9. Further, both the Id. courts below have not considered the facts that Tatima Moka Padtaal was done to remedy the mistake and to give the defendant no.1 possession of whole 2 Marla land. So mutation was sanctioned in the manner that 1 Marla land was given from Killa No. 22/1/4 and 1 Marla land was given from Killa No. 21/5. The ownership of the vendor Jagmal is not disputed and no outsider has a right to challenge the mutation. The Id. Trial Court did not take into account that the Kila No.21/5



was part of the land in which the said Jagmal had carved plots and also left the vacant land for passages to access the plots. Therefore, the land which Jagmal had consumed in leaving the rasta sare aam to access the various residential plots continued to reflect as his ownership in the revenue record; but, in fact, the same was no more vested in him. Thus sanctioning of a mutation in that part of the land which forms the part of the rasta sare aam is manifestly illegal. Being affected by the same the plaintiff and every inhabitant having right and access to the street has right to challenge such a transaction. If the vendor Jagmal Singh did not have the property left in the Kila No.22/1/4, the remedy available to the vendee was not to take possession over any other Kila number but to get the sale consideration back. The revenue authorities, without the permission of the vendor, sanctioned mutation of the land which was never sold to the vendee defendant no.1. The defendant no.1 taking benefit of the absence of construction in some plots managed to encroach over the land left for the rasta sare aam. It is accordingly prayed that the impugned judgments and decrees of the learned courts below be set aside.

10. No other argument is raised on behalf of the appellant.

11. I have heard learned counsel for the appellant and also perused the case file in minute detail.

12. I find no merit in the submissions advanced on behalf of the appellant/plaintiff.

13. The admitted facts are that the appellant had purchased 10 Marla of land from Jagmal vide sale deed of 1979. It is the case of the



appellant that on the Southern side of the said plot, a passage was existing. The appellant is aggrieved of the fact that defendant no.1 has allegedly encroached upon the said passage. The said contentions of the appellant are falsified from the evidence on record, and the same shall be demonstrated here in after.

14. It is firstly important to note that the suit of the plaintiff – appellant is time barred. The plaintiff had filed the present suit on 19.9.2013; whereas the allegedly encroaching construction of the defendant exists since 1984. It is established on record that the construction was made by the defendant in 1984 long before the said road was constructed. The Local Commissioner PW4 upon seeing the photographs had accepted that the level of house of defendant was lower in comparison to disputed rasta existing nearby. The photographer of the plaintiff PW3 Parvinder accepted that house of the defendant was built long ago. Ex. D18 Jamabandi for the year 1999-2000 showed that construction is very old. Further, though Maman Singh DW7 deposed in his affidavit Ex.DW7/A that construction was raised in the year 1984; yet, no question was put to him by the plaintiff in this regard. From the above facts, it is established that the construction of the defendant was existing since 1984, even prior to construction of the disputed passage, and the suit was filed by the appellant after inordinate delay only in 2013. The appellant has attempted to explain the said delay by submitting that he was unable to come to the village as he was suffering from several medical problems. However, no evidence whatsoever was produced by the



appellant to remotely indicate that he was suffering from any medical problem.

15. Furthermore, it has been admitted by learned counsel for the appellant before this Court that the plaintiff – appellant has no title to the disputed passage. As such, prima facie no cause of action arises in favour of the plaintiff. Further, even if vendor of defendant No.1 had sold him the same land which existed in disputed rasta, and defendant had raised construction, even then plaintiff is estopped from challenging it as admittedly he had never objected when the construction was raised.

16. As regards Tatima Moka Padtaal, the same was done to correct the mistake and give defendant no.1 the possession of 2 Marla of land that he had admittedly bought from Jagmal. As such, only Jagmal or his legal heirs could have objected to the same. The argument of the plaintiff that ownership of the passage and dispute no longer vested in Jagmal is not just obtuse and misconceived, but also factually incorrect as evident from the revenue record.

17. The relevant findings of the learned First Appellate Court are contained in para Nos. 10 and 11 of the judgment dated 13.02.2020, which read as under:-

“10. After hearing learned counsel for appellant as well as learned counsel for contesting respondents and perusing the case file, it acknowledged that plaintiff/appellant has sought the relief of declaration and possession with consequential relief against the contesting defendants/respondents on the ground that appellant/plaintiff is owner in possession of property described in para no.1 of the plaint and the said



property was purchased by him vide sale deed No.276 and 279 dated 01.08.1979 from ancestor of respondents/defendants No.2 to 9, namely, Jagman and mutation No.1558 and 1559 were also sanctioned in favour of appellant/plaintiff. Deceased Jagmal had carved plots from above-said land and appellant/plaintiff was given specific portion in the disputed rasta.

11. It is admitted fact that both appellant/plaintiff and respondent/defendant No.1 are vendees of late Jagmal. Both of them have admitted that Jagmal had carved out plots in his property. It is not case of appellant/plaintiff that land, which exists towards South of Killa No.21/5/2 as shown in Aks-shazra Exh.D16 belonged to said Jagmal. Rather it belonged to Satpal (PW2), but said Satpal never appeared in witness box for his cross-examination. Appellant/plaintiff has nowhere pleaded that he was also given a Rasta with the land purchased by him vide sale deed Exh.P1. Perusal of said site plan Exh.P3, it acknowledged that in fact appellant/plaintiff was sold 10 Marla land and towards South of said plot of appellant/plaintiff a 3 Karam Rasta. Towards its West was also a 3 Karam Rasta. Said West to East Rasta existing in South of appellant/plaintiff is a common thoroughfare, but towards South of plot of appellant/plaintiff, no North-South road has been reflected in site plan Exh.P3. Obviously, said North-South road has not been reflected because said land belonged to Satpal. It was totally pre-operative to said Satpal to leave any passage or not. Neither parties to the suit nor their vendors could have asked Satpal for the same. It appears that later said Satpal left out some North-South passage as reflected in site plan Exh.PW4/C. It is perfectly clear that even Satpal had carved plots and said passages were left out between plots.



Subsequently Maman Singh sold out two Marla land. From perusal of mutation No.3144 Exh.P13, it acknowledged that although Jagmal had sold 2 Marla land to respondent/defendant No. 1 from rect. No.48, Killa No.22/1, but on the spot there was just 1 Marla land and hence Tatima Moka Padtaal was done to rectify the mistake and gave him possession of whole 2 Marla land. So mutation was sanctioned in the manner that 1 Marla land was given from Killa No.22/1/4 and 1 Marla land from Killa No. 21/5. It is not case of the appellant/plaintiff that late Jagmal was not owner of Killa No.21/5. Hence, objection, if any, on said mutating Tatima Moka Padtaal qua land in Killa No.21/5/1 can be raised only by Jagmal or after his death by legal heirs, not by the appellant/plaintiff. Perusal of site plan Exh.P3, it acknowledged that towards South of plot of appellant/plaintiff is a West to East thoroughfare. Appellant/plaintiff has not claimed his title in the disputed Rasta. If vendor of respondent/defendant No.1 sold him same land which existed in disputed rasta and respondent/defendant raised construction over the same, now plaintiff is estopped from challenging it. He never objected to the same when construction was being raised. Appellant/plaintiff failed to prove that construction was raised by respondent/defendant No.1 in November 2011. DW7 Maman Singh categorically deposed in his affidavit Exh.PW7/A that construction of his house was raised in year 1984, but no question was put to the witness on this aspect and thus, it being a settled law, it has to be deemed to have been accepted by the appellant/plaintiff. In this regard a reliance can be placed upon case-law Smt. Sheona Vs Smt. Maro and others 2015(1) RCR(Civil) 247 it was observed that if a witness is not cross-examined in respect of her deposition

on a particular fact and is not confronted with a plea to the contrary, the fact so stated by the witness is deemed to have admitted as correct by the parties against whose interest witness has deposed. In Mehnga Singh and others Vs Gurdial Singh and others 2004(1) RCR(Civil) 338 Hon'ble Punjab & Haryana High Court held that failure to cross-examine on a vital issue would result into adverse inference against the party.”

18. Ld. Counsel for the appellant is unable to dispute or controvert the above said facts and findings. Hence, the present regular second appeal is hereby **dismissed**.
19. Pending applications, if any, stand disposed of.

13.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No