



RSA No.756 of 1995

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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RSA No.756 of 1995
Date of decision: March 16th, 2026

Sadhu Ram (since deceased) through his LRs
.....Appellants

Versus

Ram Rachhpal (since deceased) through his LRs and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Jain, Senior Advocate
with Ms. Nikita Sharma, Advocate
for the appellants.

Mr. Vineet Chaudhary, Advocate
for the respondents.

VIKAS BAHL, J. (ORAL)

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1. The plaintiff is in second appeal against concurrent findings of fact. The trial Court vide judgment and decree dated 28.07.1992 had dismissed the suit of the plaintiff for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the property, which as per the case of the plaintiff, was bearing Nos.801 and 804. The appeal filed by the plaintiff was dismissed by the 1st Appellate Court vide judgment and decree dated 27.01.1995. It is the said two judgments of the trial Court as well as the 1st Appellate Court which have



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been challenged in the present Regular Second Appeal.

ARGUMENTS ON BEHALF OF THE APPELLANTS:

2. Learned senior counsel for the appellants has submitted that it was the case of the plaintiff that property bearing No.801 was owned and possessed by Khazana and Shri Behari Mahajan in equal shares and after the death of Khazana, his half share was inherited by Shri Norata and Om Prakash, sons of Shri Murli and the other half share of Behari Lal was inherited by the plaintiff and the pedigree table was mentioned in para 2 of the plaint. It is submitted that Norata and Om Prakash who had succeeded to half share of the property bearing No.801 had sold the same to the father of the plaintiff i.e. Atma Ram vide sale deed dated 02.05.1948 and after the death of Atma Ram, the plaintiff succeeded to the entire estate and thus was owner of property bearing No.801. It is submitted that it was further the case of the plaintiff that the property bearing No.804 was owned and possessed by Radhey who was the brother of the great grandfather of the plaintiff and as he had died issueless, the said property was also succeeded by the plaintiff and thus he became the owner in possession of both the properties bearing No.801 and 804.

3. It is submitted that in property bearing No.802, there was a *rah kucha* i.e. *kucha khas* and as per the pleadings of the plaintiff, the same was for the exclusive use of the plaintiff and the defendants had no right to use the same, however, they were wanting to interfere in the same. It is submitted that the primary dispute in the present case is duly reflected from the site plan (Exhibit P-6) and the said dispute is that beyond “*rah kucha*” shown by No.802, it was the property of the plaintiff shown by the numbers 801 and 804 but the defendants were interfering in the use of the said *rah*

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kucha up to the *gali* which was shown in the north and were thus interfering in the ownership and possession of the property which was owned by the plaintiff. It is submitted that the onus of proving that the '*rah kucha*' extended beyond 'EFGH' as shown in the site plan (Exhibit P-6) up to the *gali* was on the defendants and no evidence has been produced by the defendants to prove the said fact and thus the defendants deserve to be enjoined from using the area beyond "*rah kucha*" that is shown by 'EFGH' to access the "*gali*" on the north. It is submitted that the site plan produced by the defendants i.e. Exhibit D-1 is not proved on the record inasmuch as the witness DW-1 who has stated to have prepared the site plan has in his cross-examination, stated that the open *chowk shamlat*, which he has shown in the site plan, was written at the instance of Ram Rachhpal, who is defendant No.1 and that even Loharan Street, which has been written in the site plan, was written at the instance of the said defendant No.1 and no length and breadth of the same was taken. It is submitted that it is thus apparent that there was no proof that the "*rah kucha*", as shown in Exhibit P-6, was also a common street.

4. Learned senior counsel for the appellant has next submitted that the appellant had produced the sale deed dated 02.05.1948 on record and the Urdu version as well as the Hindi version of the same were duly exhibited. It is submitted that a perusal of the same would show that the same relates to property No.801 in addition to other property and thus it is apparent that the plaintiff was the owner of property No.801. It is argued that DW-4, who was defendant No.3, has stated in his cross-examination that in case the property in question turns out to be 801 or 804, then he has no concern with the same and thus at least an injunction qua the said two numbers should have been

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granted in favour of the plaintiff. It is further submitted that the onus to prove issue No.5 was on the defendants which onus has not been discharged by the defendants. It is submitted that neither there is any proof of any public street nor there is any proof of any usage of the same and thus the said issue and all the other issues should have been decided in favour of the plaintiff. It is prayed that the judgments of the trial Court as well as the 1st Appellate Court deserve to be set aside and the regular second appeal filed by the appellant, being meritorious, deserves to be allowed.

ARGUMENTS ON BEHALF OF THE RESPONDENTS/DEFENDANTS:

5. Learned counsel for the respondents-defendants has submitted that the trial Court as well as the 1st Appellate Court have given concurrent findings in favour of the defendants and against the plaintiff and the said findings are in accordance with law and also in accordance with the record and evidence produced and have been rendered after taking into consideration the evidence and the pleadings of the parties and are neither perverse nor illegal and thus do not call for any interference and thus the regular second appeal, filed by the appellant, is meritless and deserves to be dismissed.

ANALYSIS AND FINDINGS:

6. This Court has heard learned senior counsel for the appellant and learned counsel for the respondents and has also perused the paper book as well as the record of the trial Court and is of the opinion that that the judgment and decree of the trial Court as well as the 1st Appellate Court are in accordance with law and deserves to be upheld and the present regular second appeal deserves to be dismissed for the reasons stated hereinafter.

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bearing No.801 was owned and possessed by Shri Khazana and Shri Behari Mahajan in equal shares. It is further his case that plaintiff-Sadhu Ram has inherited the estate of Behari Lal as the said Behari Lal was the father of the great grandfather of plaintiff. In the plaint, it has been stated that Sadhu Ram was the son of Atma Ram and Atma Ram was the son of Raikhi Ram and Raikhi Ram was the son of Mool Raj and further that Mool Raj was the son of Behari. Sadhu Ram has appeared in the witness box as PW-2 and in his cross-examination has stated that he has not produced any pedigree table regarding his ancestors. Nothing has been shown to his Court to prove that Sadhu Ram has inherited the half share of Behari. Further the pleadings in the plaint, in para 2 and 3, are self-contradictory inasmuch as with respect to the other half share of property bearing No.801, it is stated that Khazana's share was inherited by Norata son of Om Parkash, whereas in paragraph 3 of the plaint, it has been stated that Norata and Om Parkash are the sons of Shri Murli. Moreover, reliance has been placed upon the sale deed dated 02.05.1948 which is stated to have been executed by Norata and Om Parkash, sons of Murli, who as per the case of the plaintiff, had succeeded to the half share of property bearing No.801. Even a perusal of the said sale deed would show that the area which has been sold to Atma Ram, the father of the plaintiff, is not mentioned and towards the south, it has not been stated that there is any "*rah kucha*" which aspect is also very relevant and would be detailed hereinafter. Even PW-2-plaintiff in his cross-examination, has stated that he does not remember the length and breadth of the "*khola*" and does not even know the number of the property towards the west nor does he remember the length and breadth of the disputed land. The said aspect would be relevant and would be detailed hereinafter.

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8. In the plaint, it was further the case of the plaintiff that property bearing No.804 was owned and possessed by Radhey, who as per the case of the plaintiff, was the brother of great grandfather of the plaintiff and had died issueless and thus the plaintiff had succeeded to the said property No.804. It would be relevant to note, as has been stated by PW-2, that no pedigree table regarding the ancestors has been produced and the plaintiff has not been able to show that he was the successor of the said Radhey, much less, the sole successor. In para 5 of the plaint, the plaintiff had set up a case that there was a “*rah kucha*” which has been depicted by him in the site plan (Exhibit P-6) as ‘EFGH’ and as per the case of the plaintiff, the same carried the number 802 and further it was the case of the plaintiff that the said “*rah kucha*” was to be used by the plaintiff to go to his property No.801 and 804 and the defendants had no right to use the said “*rah kucha*” or to pass further through the property of the plaintiff so as to reach the *gali*.

9. The defendants in the written statement had raised preliminary objections including the objection that the suit was frivolous and was not filed on the basis of the present position and the site plan was also very vague and further that there was no relation of the plaintiff with the persons who were shown in the pedigree table. It was further stated that the numbers of properties as mentioned i.e. 801, 804 etc. were not traceable on the spot as the numbers were not based on any current numbers and the measurement of the areas falling under those numbers was not given in the plaint. With respect to the inheritance, it was specifically stated that the parentage, as shown, was wrong and denied and that no document had been produced by the plaintiff to even remotely show that he had succeeded to the property of the persons as was mentioned in the plaint. It was further stated that the

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measurement of property No.801 and “*rah kucha*” was also not mentioned and that the houses of the defendants were abutting the street in question as was detailed in the site plan of the defendants and there were *parmalas* and ventilators of the house of Sadhu Singh and Girdhari Lal opening up in the said street and all the houses were constructed along with the street more than 50 years ago and it is the defendants and the other residents who were using the same and had easementary right to do so.

10. The trial Court vide order dated 01.10.1983 had framed the following issues:

- “1. Whether the plaintiff is in possession of the disputed property?OPP.
2. Whether the plaintiff is entitled to the injunction prayed for?OPP.
- 3- Whether the plaintiff has no locus standi file the present suit?OPD.
4. Whether the plaintiff is estopped from filing this suit by his own act and conduct?OPD.
5. Whether the defendants are using the site in dispute for the last more than 50 years?
If so, to what effect?OPD.
6. Relief.”

11. The suit of the plaintiff was dismissed by the trial Court after giving findings on each of the said issues.

12. It was observed by the trial Court that the only dispute in the present case was with respect to the property which was stated to be “*kucha aam/rah khas* i.e. *rah kucha*” which the plaintiff was claiming to be his personal property, whereas the defendants had claimed that the same is for the use of the entire village. After taking into consideration the documents

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produced by the plaintiff, it was observed by the trial Court that since the suit property falls in '*abadi deh*' and since no current numbers of the suit property had been mentioned, the position at the spot was not very clear and that it was the duty of the plaintiff to prove that the disputed property is the same which was purchased by him in the year 1948 and was inherited by him. It was observed that the site plan which was produced could not be correlated with the existing position on the spot, whereas, on the other hand, the defendants had produced sufficient evidence to show that the disputed property was a common street which opens on both sides towards the main street and it was enjoyed by all the persons who have their houses along with the said street. It was observed that even the report of the Local Commissioner dated 23.02.1989 which was duly exhibited as DW3/C would show that there was a street in the disputed property and in the said street the houses of the defendants were there and even four ventilators and two *parnalas* open in the said street. Reference was also made to the site plan prepared by the Local Commissioner, exhibited as DW3/B, and it was observed that a perusal of the same made the entire issue crystal clear to show that the disputed property was in fact a common street.

13. Reference was also made to the evidence of DW1 Mangal Singh and DW4 Sadhu Singh as well as the evidence of the plaintiff to state that the disputed property was *gali* '*Sharey Aam*', and that the inhabitants of the street used the same without any hindrance from anybody. It was further found that the plaintiff was not in possession of the disputed property and accordingly issue no.1 was held in favour of the defendants and against the plaintiff. Under issue no.2, it was observed that the plaintiff had failed to prove that he was in possession of the disputed property and thus, no

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injunction could be granted to him. Under issues No.3 and 4, it was observed that the disputed property was a *gali* 'Sharey Aam' which was being used by all the parties and accordingly the said issues were decided against the plaintiff and in favour of the defendants. Under issue no.5, it was observed that the disputed property was being used by all the defendants for the last several years and thus, even the said issue was decided in favour of the defendants and the suit of the plaintiff was dismissed.

14. The 1st Appellate Court vide judgment dated 27.01.1995 had dismissed the appeal filed by the plaintiff. The application filed by the plaintiff under Order 41 Rule 27 CPC for additional evidence and for appointment of Local Commissioner to locate *khasra* Nos.801, 803, 804 and 802 was dismissed with the observations that the said numbers have no bearing as the suit was not filed on the basis of current position of the property and that the old numbers, which were allegedly given in the year 1852, could not be stated to be relevant for the purpose of adjudication of the case. It was further observed that there was no measurement of any property given in the documents produced by the plaintiff and thus, on the basis of the numbers assigned in the year 1852, the existing position of the property in dispute could not be decided. It was observed that the numbers cannot be demarcated without the area having been given and that since the Local Commissioner had already been appointed by the trial Court and as per the report and the map the land in dispute was admittedly a vacant land, thus, the application for additional evidence was found to be devoid of any merit and was accordingly dismissed. The dismissal of the said application has not been challenged before this Court.

15.

On merits, it was observed by the 1st Appellate Court that even

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as per site plan (Ex.P6) produced by the plaintiff, on both the sides of the alleged “*rah kucha*”, the houses of the defendants have been shown and further as per the report of the Local Commissioner and the site plan prepared by the Local Commissioner, ventilators and parnalas of the houses of the defendants, fall in the said “*rah kucha*” and hence, it could not be said that “*rah kucha*” was the exclusive property of the plaintiff. It was also observed that the person who had prepared the site plan (Ex.P6) had not been examined by the plaintiff and the said site plan was not as per the existing position as the same was contrary to the site plan prepared by the Local Commissioner Ex.DW3/B and the site plan Ex.D1. It was observed that the plaintiff had failed to prove that he is in exclusive possession of the disputed property or that the “*rah kucha*” does not extend to *gali* towards north or that the houses/property of the plaintiff are in existence in between. It was observed that the real dispute between the parties was regarding the right of passage and that the said right of passage was with the defendants also who had their houses on both sides of the said passage/street. It was further observed that the suit had been filed by the plaintiff only with the intent to close the right of defendants for going to the *gali*/street towards the northern side and it was for the plaintiff to prove that he was in exclusive possession of the said property and that the defendants had no right to use the said property, which was not proved and accordingly while upholding the findings of the trial Court on all the issues, the appeal filed by the plaintiff/appellant was dismissed.

16. As has been argued before this Court, the main dispute in the present case is as to whether the “*rah kucha*” which has been depicted in the site plan (Ex.P6) produced by the plaintiff, goes up to the *gali* in the north or



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after the point EFGH in the site plan (Ex.P6) is the property of the plaintiff, which as per him, carries the numbers 801 and 804. Apart from the fact that the plaintiff has not been able to show that the disputed property bears No.801, 804, the plaintiff has also not been able to prove the ownership of property bearing number 804 or of the whole of property bearing number 801. It would be relevant to note that even assuming property Nos.801 and 804 belong to the plaintiff, then also there is nothing to show that the said property number 801, as shown in Ex.P6 extends in front of the “*rah kucha*” as admittedly no dimensions of the said property number 801 is coming forth. Even as per Ex.P6, it is the case of the plaintiff that there is a “*rah kucha*” and on the both sides of the said “*rah kucha*” there are houses of the defendants i.e. Madan Lal (defendant No.4), Ram Rachhpal (defendant No.1) and Sadhu Singh (defendant No.3). Further as per the said ExP6, on the northern side of the number allegedly marked as 801, there is a ‘*gali*’ and even on the southern side, from where the “*rah kucha*” starts, there is a *gali*/street. On 28.01.1989, the trial Court had appointed a Local Commissioner on an application filed, which was not objected to by either of the parties. The said Local Commissioner had given a report which had been duly exhibited as Ex.DW3/C and a perusal of the said report would show that it had been recorded that on the northern side of the street there is a ‘*Nali*’ then, ‘*Rasta Aam*’. It has also been stated that there are ventilators and *parnas* opening into the street. Admittedly, there was no objections filed to the report of the Local Commissioner. The Local Commissioner had also prepared a site plan which was exhibited as Ex.DW3/B, and the said site plan, when read with the report, leaves no room for doubt that the disputed area is a street and thus, the “*rah kucha*” which has been shown in

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Ex.P6 further extends northwards and goes up to a *gali* and the plaintiff has not been able to show that the said “*rah kucha*” as shown in Ex.P6 is up to his plot which as per him is 801.

17. A perusal of the record would show that there is no construction of the plaintiff either in the alleged property No.801 or 804 and there are trees which are grown in the said area and there is also a telephone line as well as electricity line passing from the said place, which all factors clearly show that the plaintiff has not been able to show that the area which he is wanting to depict as property No.801 bears the said number and is of the size which has been mentioned in Exhibit P-6.

18. Admittedly, no witness has been examined to prove the site plan Exhibit P-6. Plaintiff-Sadhu Ram had appeared as PW-2 and in his cross-examination has admitted that he does not remember the length and breadth of the *khola* or of the disputed land and does not know the number of the property towards the west and has further stated that there is a thoroughfare towards the west. It is further admitted by him that there is a distance of 8½ feet between Sadhu Singh’s house and Madan Lal’s house. The said two houses are on the two sides of the street. From the above evidence, it is apparent that the plaintiff is not even aware of the length and breadth of the property and thus it does not lie in his mouth to say that the property, which as per him carries number 801, extends up to the property which as per the Local Commissioner and as per the case of the defendants is a street going up to the ‘*gali*’. Even the sale deed dated 02.05.1948 produced by the plaintiff does not help the plaintiff in any manner inasmuch as a perusal of the same would show that no length or breadth or even the

area of the property purchased by the father of the plaintiff has been



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mentioned. Further even as per the said sale deed, only half share of 801/1852 is stated to have been purchased by the father of the plaintiff without there being any mention of the area of the said number. The boundaries of the said '*bara*' which is stated to be in 801/1852 would show that the same goes against the case of the plaintiff inasmuch as in the said sale deed it is mentioned that towards the south of the said *bara*, there is property of Durga and there is no reference of there being a "*rah kucha*" towards the south, although as per the site plan (Exhibit P-6), it was the case of the plaintiff that towards the south of property No.801, there is also "*rah kucha*".

19. From the abovesaid document and evidence, it is apparent that neither it is proved that the disputed property is currently the one which earlier in the year 1852 was given No.801, 804 etc. nor it is proved as to what is the area which has been purchased by the father of plaintiff nor it is remotely shown that the area to the north of the "*rah kucha*" as shown in Exhibit P-6 was the ownership and in possession of the plaintiff and thus both the Courts below have rightly observed that in the said circumstances, injunction cannot be granted in favour of the plaintiff.

20. Additionally, it would be relevant to note that it is the case of the plaintiff that he is the owner of property No.801 and 804 and with respect to property No.804, it has been stated that Shri Radhey was the owner and the said Radhey was the brother of the great grandfather of the plaintiff and the said Radhey had died issueless, thus, the plaintiff had succeeded to his property. As has been stated hereinabove, the said PW-2 in his cross-examination has stated that he has not produced any pedigree table regarding his ancestors. The defendants in the written statement have

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strongly refuted the alleged pedigree table mentioned in the plaint, as well as the relationship set up by the plaintiff in the plaint. Nothing has been shown to this Court to show that there was any material evidence to connect the plaintiff with Radhey or to the fact that he has inherited his property. There is no document, much less, sale deed in favour of the plaintiff with respect to property bearing No.804. Even with respect to property No.801, it is the case of the plaintiff that half was owned by Behari Mahajan and half was owned by Khazana. It is further the case of the plaintiff that Behari was father of great grandfather of the plaintiff, which fact, has also not been remotely proved and was disputed by the defendants. It is only with respect to half property bearing No.801 that a sale deed of the year 1948 has been produced and even in the said sale deed, no area has been mentioned nor length and breadth of the property has been given. The plaintiff has not been able to establish that the disputed property bears the said numbers as no site plan as per the present position, has been proved on record. Even the person who had made the site plan (Exhibit P-6) has not been examined. Even with respect to the sale deed dated 02.05.1948, which was in favour of father of the plaintiff Atma Ram, it is relevant to note that PW-2 in his cross-examination has stated that Atma Ram had three sons and three daughters. Further in his cross-examination, the said PW has stated that Radhey had not executed any Will and that properties No.801 and 804 were open spaces and the residential house of the plaintiff was a different property which was numbered as 63/64 and as is apparent from DW-3/B as well as Exhibit P-6, was situated on the southern side of the property in question much below the street on the southern side. PW-3, who is another witness produced by the plaintiff, has in his cross-examination stated that he does not know as to



from which house the '*kucha*' starts and to which house it ends and that how long and wide the "*kucha khas*" is or that as to what is the number of the plaintiff's place.

21. On the other hand, DW-1 has specifically stated that the site plan Exhibit D-1 has been prepared by him on the spot and although it was prepared at the instance of the defendants but it was prepared according to the spot and that he had also carried out the measurements regarding the same. Thus, the fact that certain houses were mentioned at the instance of Ram Rachhpal does not take away the evidence of the said DW-1 inasmuch as in his examination-in-chief itself, he had stated that he had prepared it at the instance of the defendant but according to the spot. At any rate, once the Local Commissioner, who was appointed by the trial Court had duly proved his report which shows that there is a street in the disputed area, the plea of the plaintiff that the street is only up to the point shown as 'EFGH' in Exhibit P-6 cannot be accepted. The plea raised on behalf of the appellant on the basis of the statement of DW-4 Sadhu Singh is on account of misreading of the evidence of DW-4 Sadhu Singh. Sadhu Singh in his examination-in-chief has specifically stated that the disputed place is a public pathway and on one side of it, his house is located and on the other side, is the house of other defendants i.e. Madan Lal and others and that he has six ventilators and three water outlets towards the said street and the construction was raised before his birth. It was further stated by him that in the said pathway, there are wires of telephone and electricity and the path is a public one and the people of the entire village pass through the same and further that he has seen the street from his birth and also that it has been in use since then. He has further duly proved the site plan Exhibit D-1 and has stated that the same is correct as per



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spot. The said evidence has been recorded on 16.07.1992 and the said DW-4 is stated to be 70 years of age at that time. In the cross-examination, the said DW-4 has specifically stated that it is incorrect that the disputed place falls under numbers 801 or 804 and on a further suggestion given, he has stated that if the same turns out to be numbers 801 or 804, then, he has no connection with the same. No alleged admission of the said witness to the effect that property No.801 and 804 is owned by the plaintiff has been highlighted on behalf of the plaintiff. The reading of the said evidence clearly shows that the said DW-4 has specifically stated that the area in question does not bear No.801 or 804 and merely because he has stated that he has no concern with the same would not call for grant of injunction in favour of the plaintiff when it is not proved that the disputed property bears the said numbers.

22. It is a matter of settled law that onus of proving the case is on the plaintiff and since the said onus has not been discharged thus the said issues have rightly been decided against the plaintiff, more so, issue No.1 and 2 which were the material issues. The other issues including issue No.5 were decided in favour of the defendants and there is no perversity or illegality in the said finding.

23. Keeping in view the abovesaid facts and circumstances, the judgments of the trial Court as well as the 1st Appellate Court are in accordance with law and deserve to be upheld and are accordingly upheld and the regular second appeal is meritless and is accordingly dismissed.

March 16th, 2026
Puneet/naresh. k

(VIKAS BAHL)
JUDGE