



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1962-2012(O&M)

Date of decision: 26.02.2026

Laxmi Devi & Others

...Appellant(s)

Vs.

Purushotam Dass (since deceased) thr LRs & Ors.

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sudhanshu Makkar, Advocate
for the appellants.

Mr. Anil Ghanghas, Advocate
Mr. Abhishek, Advocate
for the respondent No.1.

NIDHI GUPTA, J.

The plaintiffs No.7 to 10 are in second appeal against the concurrent judgments and decrees of the Id. Courts below whereby suit filed by the appellants for declaration has been dismissed by both Courts below.

2. Brief facts of the case are that the plaintiffs had filed the instant Civil Suit for declaration and permanent injunction. The plaintiffs were:

".....seeking declaration to the effect that plaintiff no. 1 to 6 are owner in possession of the house bearing municipal unit no. X-760/12 as shown in the site plan in red colour by mark A B C D and bounded as under:

East: House of Patash Kaur.

West: House Smt. Laxmi etc plaintiff no. 7 to 11 and Private joint



passage.

North: House of Puran, Sukbir etc.

South: Gher Sharma ji

And similarly plaintiff No. 7 to 11 are owner in possession of house bearing municipal unit No. X-760/11 shown in yellow colour by mark D I G F bounded as under:

East: House of Dhanho Devi etc plaintiff no. 1 to 6.

West: House of Shish Ram.

North: Private Passage.

South : Gher Sharma ji

Both the above-mentioned houses are situated in khasra no. 693 min (1-4) and defendant no. 2 has executed a registered sale deed no. 1148 dated 7.5.2004 in favour of defendant no. 1 by virtue of which he has sold out the private joint passage for which he had no right to do so. Thus, the aforesaid sale deed is illegal null and void to the extent of sale of private joint passage.”

3. Consequentially, permanent injunction was prayed against the defendants for restraining them from causing interference in usage of joint rasta, by unauthorisedly encroaching the same.

4. It was the pleaded case of the appellants/plaintiffs that their predecessors-in-interest had settled down on the suit land comprising in Khasra No.693 about 50 years ago. Since then, the plaintiffs had been in continuous possession of the suit land without any interference for the last more than 50 years and since then girdawari is continuing in their names. In



the Revenue Record, Maha Singh; Smt. Dhanno/plaintiff No.1; Jai Singh, husband of plaintiff No.7; and Shish Ram/defendant No.2/Uncle of the appellants (owner in possession of his Municipal Unit no. X 760/10); were shown to be in cultivating possession of the suit land jointly; and in possession of their respective shares. The suit land comprised in khasra No.693 min is measuring 1 kanal 4 marla which comes to approximately 720 square yards. They have constructed houses in the suit land as per their convenience such that three municipal units i.e. X-760/10 (measuring 258 Sq. Yards, belonging to defendant no. 2); X-760/11 (measuring 129 Sq. Yards, belonging to Plaintiffs no. 7 to 11); and X-760/12 (measuring 129 Sq. Yards, belonging to Plaintiffs No. 1 to 6); were carved out. They also left a 6 ft. wide joint private rasta for their ingress and outgress, which is shown in green colour and marked as CGHI in site plan (Ex. P-1). Said Rasta is joint for plaintiffs and defendant no. 2. It was reiterated that plaintiffs No.1 to 6 along with plaintiffs No.7 to 11 are in possession of 258 square yards of land i.e. each is having 129 square yards. Similarly, defendant No.2 was also owner in possession to the extent of 258 yd.². For the ingress and outgress of their houses, the plaintiffs and defendant No.2 had left some portion of land measuring about 6 feet wide as joint passage (marked CGHI in the Site Plan).

5. It was further pleaded that Defendant No.2 had sold his house to defendant No.1 vide registered Sale Deed No.1148 dated 07.05.2004. However, defendant No.2 had sold an area of 373.33 square yards instead of



258 square yards in the garb of the said Sale Deed. Defendant No.1 is adamant to interfere and change the nature of joint passage which was left by the parties for accessing their houses. Thus, declaration was sought that the Sale Deed executed by defendant No.2 in favour of defendant No.1 wherein the joint passage was also sold is null and void to that extent. With these pleadings, present suit was filed on 21.08.2004.

6. Upon notice, defendant No.1 had appeared and resisted the suit by filing written statement by denying that any common passage existed as alleged by the plaintiffs. It was contended that defendant No.2 was owner in exclusive possession of house bearing area 373 square yards having constructed area upon 200 square feet. It was contended that defendant No.1 was bona fide purchaser having bought the said house for valuable sale consideration of Rs.2,80,000/- vide duly registered Sale Deed. It was alleged that plaintiffs have intentionally and deliberately shown the private joint rasta towards the western side of the house with mala fide intent. It was contended that in fact the plaintiffs had also entered into an Agreement to sell the house having total area of 336 square yards bearing Municipal Unit No.X-767 for sale consideration of Rs.3,30,000/-. Thus, plaintiffs had themselves admitted that there was no such common passage as now alleged. Accordingly, dismissal of the suit was prayed for.

7. Defendant no.2 filed written statement stating that he was in exclusive possession of house bearing MC unit No. X-760/10 towards western



side of houses of plaintiffs; and that the plaintiffs are wrongly showing passage as part of his land; and he has already sold the house measuring 373.33 Sq. yards to defendant No. 1 vide regd. Sale deed no. 1148 dt. 07.05.2004; and now, he has got no concern left with the property.

8. No replication was filed. On the basis of pleadings of the parties, following issues were framed: -

“1. Whether the plaintiffs are entitled to declaration as prayed for?

OPP

2. Whether the plaintiffs are entitled to injunction as prayed for?

OPP

3. Whether the present suit is not maintainable in the present form?

OPD

4. Whether the suit is bad for mis-joinder and non joinder of necessary parties? OPD

5. Whether the present suit is not properly valued for the purpose of court fee?OPD

6. Relief.”

9. Upon appraisal of the pleadings and oral & documentary evidence adduced by the parties, the learned Civil Judge (Junior Division), Bhiwani, had dismissed the suit of the plaintiffs with costs vide judgment and decree dated 16.11.2009.

10. The Civil Appeal filed by the plaintiffs No.1 and 6 and the appellants, was also dismissed with costs by the learned Additional District Judge, Bhiwani vide judgment and decree dated 24.01.2012. Hence, present Second Appeal by the plaintiffs No.7 to 10.



11. Learned counsel for the appellants assails the impugned judgments by submitting that the same are against law and facts on record and therefore liable to be set aside. Both the District Courts have failed to appreciate the evidence adduced by the plaintiffs/appellants in their correct perspective. Both judgments suffer from misleading and non-reading of material evidence available on record.

12. Ld. Counsel submits that plaintiffs had sought a declaration to the effect that they are joint owners in exclusive possession of the suit property; and there is joint passage marked as CGHI part of which has been illegally sold by defendant no.2/respondent No.2 to defendant/respondent No.1. It is submitted that despite the fact that this passage had been admitted to by the defendant No.2 in his cross-examination as DW2, yet the learned Courts below have ignored his admission and held that Rasta did not exist. DW2 had also admitted that the passage is the only available passage leading to the houses of the appellants. It is submitted that if illegal Sale Deed dated 07.05.2004 executed by defendant No.2 in favour of defendant No.1 is not set aside to the extent prayed for, the ingress and outgress of the plaintiffs to their homes would be blocked. To make good his claim, learned counsel refers to the Site Plan (Ex.P1) (at page 271 of the LCR).

13. Learned counsel further submits that even Local Commission had been appointed by the learned Court below to ascertain the position of spot. However, the report submitted by the Local Commission has been



completely misread by the learned Courts below inasmuch as the Site Plan produced by the Local Commission (at page 383 of the LCR) also shows that there is vacant land i.e. passage existing at the spot. It is submitted that therefore, if both the Site Plans i.e. Ex.P-1 and Site Plan produced by the Local Commission at page 383 of the LCR are juxtaposed together, they are both the same. However, for unknown reasons, both the Courts below have held that the Site Plans are different. It is contended that a perusal of the impugned judgments shows that no points of differentiation have been made out by the Courts below while holding that the said Site Plans are different.

14. Learned counsel further submits that the total suit land is comprised in khasra No.693 min which is measuring 1 kanal 4 marlas i.e. approximately 720 yd.² which includes all the three Municipal Units. Shish Ram/defendant No.2 is owner of Municipal Unit X-760/10; plaintiffs no.1 to 6 are owners of Municipal Unit X-760/12; and appellants are owner of Municipal Unit X-760/11. Out of three units total measuring 720 yd.², the plaintiffs are owners in possession of half of the land i.e. 360 yd.²; whereas Shri Ram is owner in possession of the other half that is 360 yd.². However, a civil suit was filed by one Umrao Singh against Maha Singh, Jai Singh and Mahender Singh and in that civil suit 200 sq. yards was wrongly given to Umrao Singh. Thereby leaving the plaintiffs with approximately 258 yd.²; and Shree Ram also with 258 yd.². Thus, the plaintiffs No.1 to 11 are in possession of 258 square yards of land i.e. plaintiffs No.1 to 6 are having 129 square



yards; and plaintiffs No.7 to 11 are also having 129 square yards. In order to ingress and outgress their houses, plaintiffs and defendants no. 2 had left some portion of land about 6 feet wide as joint passage which has been shown in green colour as mark CGHI. However, the defendant no. 2 sold his house to defendant no. 1 vide registered sale deed no. 1148 dated 7.5.2004 and wherein he has wrongly sold area of 373 sq. yards while he was in fact in possession of 258 sq. yards. Now in garb of that sale deed defendant no. 1 is adamant to interfere and change the nature of joint passage, which was left by the parties for accessing their houses. Thus, the sale deed executed by defendant no. 2 in favour of defendant no. 1 wherein the joint passage was also sold, is null and void to that extent.

15. Learned counsel further submits that while non-suiting the appellants, the learned Courts below have also relied upon alleged Sale Deed (Ex.D2) allegedly executed by plaintiff No.7 in favour of defendant No.1. Learned counsel contends that the learned District Courts wrongly believed the contents of alleged agreement to sell, which otherwise has not been proved by the defendants in accordance with law. The agreement to sell mentioned by defendants is not admitted and there was no issue with regard to validity and applicability of said agreement to sell. Otherwise also, agreement for sale does not create any right, title and interest. Unless the agreement for sale is proved in terms of provisions of Evidence Act, its contents cannot be relied. The agreement for sale, which is fake and



fabricated one, deserves to over-ruled, being not proved. The findings of Courts below are again perverse on this count as well.

16. It is accordingly prayed that the judgments and decrees of the learned Courts below be set aside and suit of the appellants/plaintiffs be decreed in toto with costs throughout.

17. Per contra, learned counsel for the respondents vehemently opposes the submissions advanced on behalf of the appellants and submits that Defendant no. 2 had been the owner in exclusive possession of house bearing an area 373 sq. yards having covered constructed upon 200 sq. feet. The defendant no. 2 has sold the aforesaid house to defendant no. 1 for a valuable consideration of Rs. 2,80,000/- vide duly registered sale deed and since then the answering defendant is in possession of the suit land and his possession is quite peaceful, regular, continuous and without any interference from any quarter. The plaintiffs have intentionally and deliberately shown the alleged private joint Rasta towards the western side of the house with malafide intention. It is submitted that the plaintiffs themselves had also entered into an agreement to sell the house consisting of two room, one kitchen, toilet, bathroom and open chowk surrounded by boundary wall having total area of 336 sq. yards bearing municipal unit no. X-767 for a sale consideration of Rs. 3,30,000/- Thus plaintiffs themselves admitted that there has been no such common passage. Ld. Counsel for defendant no. 1 accordingly prays that the appeal be dismissed.



18. No other argument is raised on behalf of the parties. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find merit in the submissions of the appellants.

19. There is no dispute with regard to the existence of houses under MC unit No. X-760/11 - belonging to appellants-plaintiffs no. 6 to 10 and proforma respondent no. 7; MC Unit no. X-760/12 - belonging to plaintiffs no. 1 to 5 i.e. proforma respondents no. 3 to 6, 8 & 9; and MC Unit No. X-760/10 - belonging to defendant no. 2, now sold to defendant no. 1. The possession of the respective parties is also not in dispute. The dispute is only regarding existence of the passage jointly left out by the parties and shown as 'CGHI' in the Site Plan, Ex. P-1 (at page 271 of the LCR).

20. It is to be noted that the Site Plan Ex.P-1, duly stands proved from the evidence of PW-1 Amir Chand Taneja, draughtsman. No evidence to the contrary was led by the respondent. Despite that, the Id. District Courts have non-suited the appellants primarily on the grounds that: a) they were unable to prove the existence of the disputed passage; b) because the Site plan Ex.P-1 produced by the plaintiffs ostensibly did not match with the site plan submitted by the Local Commissioner which did not show a passage existing at the spot, and the boundaries shown in that site plan are different from the site plan Ex. P-1; and c) plaintiff no.7 had herself executed sale deed Ex. D2 in favour of the defendant no.1 for an area measuring 336 yd.², which did not show any common passage.



21. However, the above-said reasoning of the learned District Courts are patently incorrect and contrary to the evidence on record. It is firstly to be noted that Shish Ram defendant No.2 while appearing as DW2 has himself admitted existence of the passage in dispute as follows: “..... ever since I have awareness (jab se hosh sambhala hai) I have seen the plaintiffs in possession at the spot. House of the plaintiffs is abutting the road. It is correct that behind my house is house of Laxmi Devi behind which there is house of Dhanno Devi volunteer Laxmi Devi and Dhanno Devi are both sisters. It is correct that suit land is situate in Khasra No.693 which measures 1 kanal 4 marlas. It is correct that Dhanno Devi etc. and Laxmi Devi etc. have one passage only. It is also correct that this passage is 6 feet wide. I have sold land to Purshottam about four years ago. I have no possession over this land. I do not know whether Purshottam lives on site or not. I have sold Municipal Unit No.X-760/10 in 1 kanal 4 marla half land was mine and half was of the plaintiffs. I had left 6 feet wide road which has been blocked by the neighbour.” i.e. defendant No.1. (Emphasis is mine)

22. Thus, DW2/Defendant no. 2 Shish Ram s/o Ram Chander has admitted in his cross-examination (at pg. 233 of the LCR) that:

- Both plaintiffs and defendant no. 2 are staying for last 50 years, though they are separate. He admits that the houses of Laxmi Devi (plaintiff no. 7) etc. and Dhanno Devi (Plaintiff no. 1) etc. fall behind his house.



- He also admits that Dhanno Devi etc. and Laxmi Devi etc. have common passage and it is also correct that that passage is 6 ft wide.
- Defendant no.2 has admitted that out of total 1 Kanal 4 Marla land, $\frac{1}{2}$ land belongs to defendant no. 2, and $\frac{1}{2}$ land belong to the plaintiffs.
- He has also admitted that he i.e. defendant no. 2 had left 6 ft. wide passage, but now, neighbours i.e. Sukhbir and Puran Mal have encroached the same.

23. Needless to say, admission is the best piece of evidence. In the present case, defendant no.2 the vendor himself has admitted to the existence of passage. Even the brother of defendant no. 2-Maha Singh while appearing as PW-2 and in chief examination (Ex.PW-2/A - at page 187 of the LCR), has acknowledged the existence of passage which is in use of the plaintiffs.

24. Thus, from the above evidence it is crystal clear that defendant no.2/DW2 and his brother PW2 have both made categoric and unambiguous admissions to the effect that there exists a 6 feet wide passage; which is the only access to the house of the plaintiffs; and which passage has been blocked by defendant no.1. As observed above, admission is the best evidence. In this regard, reliance may be placed upon judgment of Hon'ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D) by Lrs. (SC) : Law Finder Doc ID # 252882**, wherein it is held that:-



“16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings.”

25. Thus, finding of the District Courts that their existed no passage at the spot, is factually incorrect as defendant no.2 that is, the vendor himself has admitted the existence of the passage.

26. In this context, reference is made to judgment of the Hon'ble Supreme Court in **R. Kuppayee v. Raja Gounder, (SC) : Law Finder Doc ID # 65736**, wherein it is held that: *“Findings recorded by the trial court and upheld by the First Appellate Court and the High Court based on misreading of evidence are liable to be set aside. The findings recorded on misreading of evidence being perverse cannot be sustained in law.”*

27. Furthermore, finding of the District Court that Local Commissioner has reported that there exists no passage at the spot, is again based on total misreading of the Report dated 26.04.2005 (At Pg. 381-389 of the LCR) submitted by the Local Commissioner. In this regard, it may firstly be noted that Site Plan prepared by Local Commission (at pg. 383 of the LCR)



also shows the passage in existence as LC has reported that between Mark C and D in the said site plan, there is open area of about 5 ft. 8 in. A perusal of the said report given by the Local Commission (at page 385 of the LCR) shows that LC has clearly reported that *"I went to the site and prepared the site plan. As per the site plan at Mark ABC there is a wall; and between Mark C and E there is a vacant area measuring 5 feet 8 inches; and between Mark D and E also there is vacant place where Sukhi Baarh has been kept."* Thus, the Local Commissioner in his Report has categorically stated that there exists *"a vacant area measuring 5 feet 8 inches"* at the spot. It is but trite to suggest that the said vacant area is nothing but the passage in dispute depicted as CGHI in the Site Plan Ex.P-1. It is not the case of the respondent that the vacant area does not exist at the spot. Even nothing to the contrary has been shown by the respondent. Thus, the contrary finding of the District Courts, as also their observation that the two site plans do not tally, are incorrect.

28. Thus, it is clear that there is mis-reading and non-reading of the material document. Rather, when both the site plans i.e. Ex P-1 (at pg. 271 of the LCR) produced by the plaintiffs, and the site plan prepared by the Local Commissioner (at pg. 383) are compared, they appear to be complementing each other, rather than contradicting each other. The observations of the Id. Courts below to this effect are therefore, palpably wrong. The passage in dispute is the only passage for ingress and outgress from the houses of the plaintiffs. It is otherwise an easement of necessity.



29. Further, defendant no.2/DW2 has admitted that total land comprised in Khasra No.693 is measuring 1 kanal 4 marla i.e. 720 square yards. As noted above, DW2 has also admitted that he is owner in possession of half i.e. 360 yd.²; and that the remaining 360 square yards is in the ownership and possession of the plaintiffs No.1 to 11. It is also admitted position on record that plaintiffs No.1 to 6 are in possession of 129.7 square yards and plaintiffs No.7 to 11 are also in possession of 129.7 square yards. From this fact also it is proved that the rest of the land has been left as rasta. Moreover, if defendant No.1 is questioning the ownership of the appellants over the suit property, then he is also doubting title of his vendor Shish Ram.

30. Further, defendant no.2 has categorically admitted that he is owner of only 360 yd.². However, as per the impugned Sale Deed no. 1148 dated 07.05.2004/Mark-A (at pg. 273 of the LCR), defendant No.2 has sold land measuring 373.33 yd.². Thus, as per his own admission, defendant no.2 has sold more than what he owned. Despite direct Court query, learned counsel for the respondent is unable to clarify or explain this anomaly as to how defendant no.2 sold 373.33 yd.² when admittedly, he is owner of only 360 yd.². Clearly, therefore, defendant no. 2 has sold the area under passage.

31. It is also on record that each Municipal Unit is measuring 258 square yards. Yet, vide the impugned Sale Deed no. 1148 dated 07.05.2004/Mark-A, the defendant no. 2-Shish Ram has sold 373.33 Sq. Yds area to defendant no. 1, despite the fact that he was in possession of 258 Sq.



yards only under MC unit no. X-760/10. From this, also it is clearly established on record that defendant no.2 has sold excess area by including the joint passage shown as CGHI.

32. Furthermore, the alleged Agreement to Sell dated 07.05.2004 (Ex.D2) executed by the plaintiff No.7 in favour of defendant No.1 is admittedly not proved by the defendant No.1 in accordance with law. Mere exhibition of a document would not amount to proving the same as required under Section 68 of the Indian Evidence Act. No witness has been examined to establish Ex. D2. Thus, Ex. D2 cannot be held against the plaintiffs, and findings of the Courts below while relying upon Ex.D2, are unsustainable.

33. Last but not the least, the plea of acquiring ownership by way of adverse possession has not been specifically taken by the plaintiffs in the pleadings. As such, the findings of both the Courts below regarding plea of adverse possession is mis-founded and does not warrant any attention.

34. In view of the above discussion, present appeal stands **allowed**.

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

26.02.2026
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No