



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

211

RSA-5251-2014 (O&M)

Date of decision: 21.03.2025

Baltej Singh

...Appellant(s)

Vs.

Jaswant Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None for the appellant.

Ms. Natasha Munjal, Advocate
for the respondent.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant for permanent injunction, has been dismissed by both the Courts below.

2. At the very outset, it may be pointed that the present appeal pertains to the year 2014. Perusal of the order sheets reveals that notice was issued in the matter on 15.12.2014; whereafter the matter has been adjourned at request of learned counsel for the appellant on 15.02.2016, 31.05.2017, 07.05.2018, 08.05.2023 and 09.01.2025; and due to non-appearance of learned counsel for the appellant on 07.12.2016, 17.01.2018 and 10.01.2023.



3. Even today, even in the second round, none appears on behalf of the appellant. As such, the matter being of such an old vintage, is being heard and decided in the absence of Id. counsel for the appellant.

4. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondent is the 'defendant'.

5. The case as pleaded by the plaintiff in the plaint was that previously father of the plaintiff namely Tara Singh was owner in possession of house (as shown in blue colour in the site plan) built of land measuring 2 kanal where he was residing along with his family members for the past more than 60 years. Previously, Des Raj and Kundan Lal were residing in the house (shown in green colour in the site plan) adjoining the house of Tara Singh. Only one street shown as red in site plan leads to that house, but there was no rasta to go to Phirni of the village. Therefore, land measuring five feet in width (shown in yellow colour in site plan and mark A) was sold by Tara Singh, father of the plaintiff to Des Raj and Kundan Lal as street to go to Phirni of the village. Subsequently, Des Raj and Kundan Lal sold their house (shown in green colour in the site plan) to the present defendant/respondent and now the defendant is residing in the same. It was further pleaded in the plaint that now the defendant is alleging that Des Raj and Kundan Lal had purchased 13 feet as street from the plaintiff and he is bent upon to demolish the wall of the house of the plaintiff from point A to B and to encroach the land from the house of the plaintiff forcibly and illegally on which he has no rights. It was further mentioned that Des



Raj had expired and Kundan had given an affidavit in favour of the plaintiff that he and his brother Des Raj had purchased only 5 feet of land (as shown in yellow colour in the site plan) for using street to go to the Phirni of the village from the father of the plaintiff. It was further averred that the defendant had moved false applications before the Deputy Commissioner, Ferozpur Sub Divisional Magistrate and Naib Tehsildar, Ferozpur in which enquiry was conducted and applications of the defendant were found to be false. The plaintiff had therefore, approached and requested defendant not to demolish the wall in question, however to no avail. Hence, the present suit was filed on 15.6.2007.

6. Notice of the suit was given to the defendant who appeared through counsel and resisted the suit by filing written statement. Besides formal objections, it was pleaded in the written statement that the plaintiff had produced wrong site plan regarding the premises in dispute. The correct site plan was placed by the defendant. The plaintiff had concealed the material and true facts from the Court. The plaintiff is stated to be not owner of any part of the property in dispute including the passage in dispute. It was further averred in the written statement that a passage of 13 feet in width was going along the line ABC and DEF as shown in green colour in the site plan attached by the defendant, which leads from the Phirni of village towards the house (as shown in the blue colour in the site plan) of the defendant. The said passage has been in existence for the last more than 50 years. It was further stated that this passage in green colour is the only passage from where the defendant takes his tractor trolley to his



house as owner for ingress and egress. It was further stated that the plaintiff is an influential person; whereas the defendant is a poor Harijan; and that the plaintiff in the garb of the suit wanted to encroach the passage leading to the house of the defendant from the Phirni of the village. Accordingly, dismissal of the suit was prayed for.

7. Plaintiff filed replication re-asserting the averments made in the plaint and denying those made in the written statement.

8. On the basis of pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled for injunction as prayed for?OPP

2. Whether the site plan placed on file by the plaintiff is correct?OPP

3. Whether the plaintiff has concealed material facts, if so, its effect?OPD

4. Relief.”

9. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 against the plaintiff and in favour of the defendant; issue No. 3 was decided against the defendant and in favour of the plaintiff as at the time of arguments, the same was not pressed by the defendant; and accordingly, vide judgment and decree dated 17.02.2012, the learned trial Court dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was also dismissed with costs by learned Additional District Judge, Ferozpur vide judgment and decree dated 22.04.2014, thereby affirming the judgment and decree of the learned trial Court. Hence, the present second appeal.



10. Perusal of the Grounds of Appeal filed by the appellant shows that it has been pleaded therein that learned Courts below have committed error in discarding the report of Local Commissioner (Ex.P4) on frivolous grounds. No reasons have been given as to why the Local Commissioner would prepare false report against the defendant. The evidence of defendant/respondent/DW1 could not have been relied upon as it was coming from interested person and was beyond pleadings. The reason for rejecting the plaint given by both the Courts below is also beyond pleadings. Besides the solitary statement of the defendant, there is no other documentary or oral evidence to prove the case of the defendant.

11. It has further been pleaded that no adverse inference can even be drawn against the appellant for not examining the Halqa Patwari as the disputed passage line within Lal Lakir of the village i.e. Abadi portion in respect of which no site plan was ever prepared by the revenue staff. As such, no document was ever available with Halqa Patwari.

12. It has also been submitted in the Grounds of Appeal that the learned Courts below have erred in discarding the photographs (Ex.P1 and Ex.P2) merely for the reason that no direction was given to the Local Commissioner to take photographs; whereas no such direction was required. The Local Commissioner is assigned a particular duty and while doing so, he can collect whatever material he gets, and he has to forward the entire material collected by him alongwith his report to the learned Court which material is lawful evidence as per law.



13. *Per contra*, learned counsel for the respondent/defendant with her able assistance, has taken this Court through the entire record of the case. Ld. Counsel for the defendant has submitted that the report of the Local Commissioner could not have been relied upon as, as per the plaintiff's witnesses PW1 to PW3, the said report was not prepared at the spot. In fact, the said report is admitted to having been prepared in the house of Rajwant Kaur, who was Sarpanch of the village and related to the plaintiff. It has further been pointed out that the dispute pertains to the wall in question as to whether the said wall from point A to B is bearing width of 5 feet or 13 feet. It is submitted that in this regard evidence of Halqa Patwari was crucial. However, Halqa Patwari has not been produced as witness by the plaintiff to prove his case. It is accordingly prayed that the present appeal be dismissed.

14. I have heard learned counsel for the respondent/defendant and perused the case file, as also the lower court records in minute detail.

15. In the Grounds of Appeal, it has been averred that the report of the Local Commissioner (Ex.P4) could not have been doubted. I find no merit in the said assertion. As submitted by learned counsel for the respondent, the record unequivocally establishes that the report of the Local Commissioner has been rightly discarded by the learned Courts below. Certain relevant facts in this regard are that Local Commissioner was appointed in pursuance to order dated 29.05.2007 passed by learned trial Court. Local Commissioner submitted report dated 31.05.2007 Ex.P-4 to the effect that passage is about 130-132 feet long. The defendant had



filed his objections dated 12.9.2007 (available at page 211 to 214 of the LCR), to the report of the Local commissioner. In the said objections, the defendant has clearly mentioned that the report is ex parte as the same was made in the absence of the defendant; that the Local Commissioner did not visit the street in dispute or make Spot inspection; that the report was prepared in the house of Rajwant Kaur/Sarpanch of the village and relative of the plaintiff; and defendant was not associated by the Local Commissioner; the signatures of the villagers alleged to be present at time of making report, were taken on blank paper; that the photographs relied upon by the Local Commissioner, while making the report are not of the spot in dispute and therefore carry no value.

16. The above objections of the defendant are proved to be correct by the clear and consistent evidence of plaintiff's witnesses themselves -PW1 to PW3 - to the effect that the report of the Local Commissioner (Ex.P4) was not prepared at the spot, and was prepared in the house of Rajwant Kaur, who was Sarpanch of the village and related to the plaintiff. This Court has gone through the voluminous Lower Court Record. PW1 Nachhattar Singh in his cross-examination (available at page 79 of the LCR), has admitted that Baltej Singh/plaintiff is his nephew. PW1 has categorically deposed that *"I do not know when the Local Commissioner Smt. Poonam Gupta visited the spot. It is correct that Local Commissioner visited the house of the Rajwant Kaur and did all the proceedings in her house."* Even PW2 Harpreet Singh has admitted in his cross-examination (available at page 89 of the LCR) that *"the plaintiff is my*



cousin..... I do not know when the Local Commissioner Smt. Poonam Gupta visited the spot. It is correct that Local Commissioner visited the house of Rajwant Kaur and did all the proceedings in her house.” PW3 Gurpreet Singh in his cross-examination (at page 97 of the LCR) has also stated as above. From the above facts, it is clear that the report of the Local Commissioner (Ex.P4) could not have been relied upon.

17. In this regard, the relevant findings of the learned trial Court are contained in paras No. 13 to 15 of the judgment and decree dated 17.02.2012, which read as follows: -

“13. In order to reach a right conclusion, we have to see the evidence of the plaintiff as well as evidence. No doubt, the plaintiff has examined PW-5 Poonam Gupta, Advocate to whom the Court had appointed as Local Commissioner and she visited the spot and submitted her report as well as site plan, but witnesses of the plaintiff themselves stated that Local Commissioner Poonam Gupta, visited the spot and she also visited the house of Rajwant Kaur and did all the proceedings in her house, so it means that report submitted by Local Commissioner having some dent being it was not prepared at the spot, rather, it was prepared by sitting in the house of Rajwant Kaur who is close to the plaintiff. This factum has been admitted by PW-1 Nachhattar Singh, PW-2 Harpreet Singh and PW-3 Gurpreet Singh in their respective cross examination.

14. *No doubt, the plaintiff has made efforts to bring on file number of witnesses to prove the existence of wall mark A to B shown in the site plan Ex.P3, but I think the appropriate remedy or way with the plaintiff is to examine Halqa Patwari, who is competent witness to prove the existence of passage as well as its width because mainly there is a passage, whether*



the passage claimed by the plaintiff in site plan Ex.P3 from point A to B is 5 feet width or 13 feet width and moreover Halqa Patwari can bring Akash Sajra or site plan of the village where from the exact width of the passage can be ascertained, but for the best known reasons the plaintiff has not examined any Halqa Patwari nor brought on file any documentary proof showing width of the passage.

15. *In this case, both the parties are relying upon oral evidence as well as self made site plan, obviously which party whenever got prepared site plan from a private person then he must got it according to his wishes and will show all the point which will go in his favour, so here we have two site plan proved on by the plaintiff and defendant i.e. Ex.P3 and Ex.D1 and at this stage it is very difficult to reach a right conclusion that which site plan showing the accurate position at the spot, that question can only be solved from the Halqa Patwari to whom the plaintiff has not examined. So from the above circumstances, when plaintiff himself failed to establish the existence of wall as well as width of the passage, then he is not entitled for relief claimed and accordingly both these issues are decided against the plaintiff and in favour of the defendant.”*

18. It has also been asserted in the Grounds of Appeal before this Court that the passage in dispute is situated in the Lal Lakir of the village and therefore, the Aks Shajra is not maintained. However, the present dispute pertains only to the passage Mark A. Further, Halqa Patwari has not been examined to attest to the truth of the said assertion of the plaintiff. It may be pointed out that a perusal of the plaint (at pages 37 to 42 of the LCR), or even a perusal of the Grounds of Appeal dated 2.3.2012 (available at pages 21 to 27 of the record of the learned



Appellate Court), filed by the plaintiff before the learned Lower Appellate Court shows that it has nowhere been mentioned by the plaintiff that the disputed Street falls in Lal Lakeer. As such, pleading of the appellant before this Court to the effect that no adverse inference can be drawn against the appellant for not examining the Halka Patwari, is misleading and incorrect.

19. It has also been asserted in the Grounds of Appeal that the learned Courts below were in error in rejecting the photographs. I find no merit in the said assertion as well, as the photographs Ex.P1 and Ex.P2 are stated to have been taken by the Local Commissioner. However, Mrs. Poonam Gupta, Local Commissioner as PW5 has admitted in her cross-examination she had not given direction for taking photographs. She has further admitted that she did not know the name of the person who took the photographs Ex.PW5/C and Ex.PW5/D. On the other hand, plaintiff/PW4 has stated in his cross-examination that the photographs were taken by one Sonu. However, photographer Sonu was also not examined. Further, the plaintiff did not remember how much amount was paid to the photographer. Whereas, it is also the categorical assertion of the defendant that the photographs are not of the spot/Street in dispute.

20. It is also relevant to note that plaintiff has admitted in his evidence (at page 113 of the LCR), that Kundan Lal was alive. Despite that Kundan Lal who would have been the best witness to depose in respect of the width of the street in question was also not produced by the plaintiff in his evidence. As such, the learned Courts below were correct in drawing



adverse inference against the plaintiff in this regard. Site plan (Ex.P3) cannot be relied upon as it has again been admitted by the plaintiff PW4 that the said site plan does not bear his signature; and the same was prepared by one Mr. Sondhi who has not been examined.

21. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

22. Pending applications, if any, stand disposed of.

21.03.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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