



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-925-1992 (O&M)
Reserved on: 29.01.2025
Date of Decision: 03.02.2025

M.C. Rohtak

.....Appellant

Vs.

Smt. Sudesh Kumari

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Sapan Dir, Advocate
for the appellant.

Mr. Balkar Singh, Advocate
for the respondent.

DEEPAK GUPTA, J.

Suit for permanent injunction in respect of disputed property, filed by the plaintiff-Sudesh Kumari (*respondent herein*) was decreed by the trial Court on 26.02.1990. The appeal filed by the defendant-Municipal Committee, Rohtak (*appellant herein*) was dismissed by the First Appellate Court of learned District Judge, Rohtak vide judgment dated 09.01.1992. Against these concurrent findings of the Courts below, defendant has approached this Court by way of the present Regular Second Appeal.

2. Trial Court Record was called and same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 According to plaintiff, she is owner in possession of H.No. 289, Ward No. 14, situated at Sanjay Nagar, Rohtak shown by letter 'ABCD' in the site plan (*Ex.PW2/D*). She had purchased the plot underneath the said house from one Ram Sarup son of Karam Chand vide registered sale dated 17.04.1978 (*Ex.PW2/A*).

3.2 The dispute is regarding the street existing on the southern side of the abovesaid house of the plaintiff. Plaintiff claims that the width of



the street on the southern side of her house is 15 feet, which is also reflected in her sale dated 17.04.1978 and also in the sale deed of 1969, whereby her vendor Ram Sarup had purchased the property from the previous owner. It is the case of the plaintiff that portion 'DCEF', as shown in the site plan, forms part of her house, but by claiming the same to be part of street, defendant wants to demolish wall DC of her house and encroach the disputed portion. In order to restrain the defendant from doing so, she brought the present suit seeking decree of permanent injunction.

4. Defendant-Municipal Committee, Rohtak (*appellant herein*) does not dispute the ownership of the house of the plaintiff. However, according to the defendant, the width of the street on the southern side of the house of the plaintiff is 20 feet and not 15 feet. It is further pleaded that site plan of the house of the plaintiff was never sanctioned; that width of the said street was earlier held to be 20 feet in the previous litigation titled as 'Meher Chand Vs. Subhash Chand and others' decided on 06.09.1982 and that disputed portion is the part of the public street and so, the said encroachment is liable to be removed. It is also the contention of the defendant that street in the southern side of house of the plaintiff was declared as public street in 1977 with width as 20 feet. With this stand, defendant prayed for dismissal of the suit.

5. In rejoinder, plaintiff reiterated her case, controverting the stand of the defendant. Necessary issues were framed. Evidence produced by the parties was taken on record.

6.1 Trial Court found, on the basis of sale deed of the plaintiff and also that of her vendor and further on the basis of sale deed of a neighbour that the width of the street in dispute, in the southern side of the house of the plaintiff was 15 feet, as had been claimed by her; and not 20 feet. The suit was accordingly decreed.

6.2 In the appeal filed by the defendant, the Appellate Court noticed that defendant-appellant-Municipal Committee had failed to produce any resolution declaring the street in dispute as a public street with



the width of 20 feet. Affirming the findings of the trial Court, it was also observed that ever since 1967 at least, the width of the disputed street was reflected in the record to be 15 feet. As such, the Appellate Court dismissed the appeal.

7. Assailing the above said concurrent findings, it is contended by learned counsel for the appellant-defendant that Courts below failed to appreciate the evidence in right prospective. It is argued that in previous litigation i.e. Civil Suit No.253 of 1979 titled as 'Meher Chand and Subhash Chand and others', in which Ram Sarup, the vendor of plaintiff-Sudesh Kumari was one of the contesting defendants and plaintiff-Sudesh Kumari herself had appeared as one of the witnesses, it had been held vide judgment dated 06.09.1982 that street in dispute was 20 feet wide. It is further argued that Courts below erred in holding that the abovesaid judgment dated 06.09.1982 (Ex.DW1/A) was not binding on the rights of the plaintiff. Prayer is accordingly made to set aside the judgments passed by the Courts below and to dismiss the suit of the plaintiff-respondent by allowing this appeal.

8. On the other hand, learned counsel for the respondent contends that the concurrent findings recorded by the Courts below are based upon the proper appreciation of oral as well as documentary evidence and that there is no scope for interference therein. Defending the impugned judgments, he prayed for dismissal of the appeal.

9. This Court has considered submissions of both the sides and has also appraised the entire record carefully.

10. As rightly observed by the Courts below, by virtue of the sale deed dated 29.04.1969 (Ex.DW-2/B), Meher Chand and Chanan sons of Kalu Ram had sold plot No.21, measuring 29 feet x 70 feet (225 sq yards) in favour of Ram Sarup. In the said sale deed, a Gali is shown on the southern side with width of 15 feet. Ram Sarup further sold the above said plot of 225 sq yards to the extent of ½ share each in favour of Sudesh Kumari and Raj Rani. Sudesh-plaintiff of the present suit had purchased eastern half of



the plot by virtue of sale deed dated 17.04.1978 measuring 112 ½ sq. yard vide Ex.DW-2/A and in the said sale deed also, the Gali on the southern side is shown to be 15 feet. The western portion of the plot was sold by Ram Sarup in favour of one Raj Rani by virtue of a sale deed dated 31.01.1978, as is referred in the judgment dated 06.09.1982 (*Ex. DW1/A*) passed in Civil Suit No.253 of 1979 titled as 'Meher Chand Vs. Subhash Chand and others'. It was also noticed in Ex.DW1/A that in the sale deed favouring Raj Rani, the width of the street on the southern side was not shown.

11. Apart from the above referred sale deeds in favour of plaintiff-Sudesh Kumari and her vendor Ram Sarup, in which width of the street on the southern side is shown to be 15 feet, the Courts below have also rightly referred to the sale deed (*copy Ex.PW-2/G*), which was executed by Meher Chand and Chanan (*vendors of Ram Sarup*) executed way back on 14.06.1967 in favour of one Hans Raj and in that sale deed, width of the street on the northern side of the plot No.20 as sold by way of this sale deed is shown in 15 feet. As per the testimony of PW2-Sudesh Kumari-plaintiff, house of Hans Raj exists in front of her house, to which also the disputed Gali abuts and in sale deed of Hans Raj also, the width of the street is 15 feet.

12. It is, thus, clear from the abovesaid oral as well as documentary evidence, as rightly appreciated by the Courts below that at least since 1967, the width of the street on the southern side of the house/plot of the plaintiff is shown as 15 feet.

13. It will not be out of place to mention that when plaintiff was granted permission to raise construction of her house by the defendant-Municipal Committee, the width of the street on the southern side was shown to be 15 feet, as has been admitted by PW1-Om Parkash, Building Inspector of Municipal Committee, Rohtak.

14. Apart from above, learned First Appellate Court has rightly observed that though defendant-appellant claimed to have declared the disputed street as a public street with the width of 20 feet by way of alleged



resolution of 1977, but no such resolution was placed on record. In the absence of any such resolution, it could not be held that any such resolution was actually passed declaring the disputed street as 15 feet. DW1-Budh Ram, the Building Inspector of Municipal Committee, Rohtak, the sole witness examined by defendant candidly admitted that he had not brought any file containing resolution to declare the street as a public street. Once, it has been found that defendant-appellant committee failed to produce any such resolution on the file, there can be no hesitation in holding that defendant-committee failed to prove that width of the street in dispute was 20 feet.

15. Learned counsel for the appellant has laid great emphasis on the judgment Ex.DW-1/A in Civil Suit No.253 of 1979 decided on 06.09.1982 titled 'Meher Chand Vs. Subash and others' to contend that in that judgment width of the street was held to be 20 feet.

16. I am afraid that the aforesaid contention is devoid of any merit. No doubt that plaintiff of the present suit Sudesh Kumari had appeared in that suit as PW3, but neither the Municipal Committee, Rohtak nor Sudesh Kumari were parties to that suit. Not only this, the Court in its judgment EX.DW-1/A had held that there was in fact originally 15 ft. wide road towards the southern side of the plot 21, which was evidently clear from the lay out plan of the colony, to which there was no rebuttal. It was also observed that in the sale deed of Sudesh Kumari and also the sale deed of her vendor, the width of this street on the southern side was shown to be 15 feet. The relief of injunction was declined in that case on the plea that Municipality had increased the width of the road from 15 feet to 20 feet in 1977-78, but that observation was made without any corroborative evidence.

17. As has already been noted neither the Municipal Committee nor the plaintiff of the case Sudesh Kumari were parties to the above suit, therefore, any observation made in the judgment dated 06.09.1982



Ex.DW-1/A of Civil Suit No.253 of 1979, are not binding on the rights of the plaintiff, as has been rightly held by both the Courts below.

18. On account entire discussion as above, this Court finds that there is absolutely no scope calling for any interference in the well-reasoned concurrent findings of the facts recorded by the Courts below, which are based on proper appreciation of evidence on record. There is neither any illegality nor any perversity in the impugned judgments. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

03.02.2025

Pry

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No