

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-712-2022(O&M)****Date of decision: 06.05.2025****Arun Kumar****...Appellant(s)****Vs.****Bharat Bhushan & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. J.P. Sharma, Advocate  
for the appellant.

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**NIDHI GUPTA, J.**

The plaintiff is in second appeal against the judgments and decrees of the Id. Courts below whereby the suit for permanent injunction filed by the appellant has been dismissed by the Id. trial Court vide judgment and decree dated 05.08.2016. The appeal filed by the plaintiff was partly allowed by the Id. 1<sup>st</sup> Appellate Court to the extent that *"...defendants are hereinafter restrained from interfering in the egress and ingress of general public including that of plaintiff from the rasta which vest in Municipal Committee as depicted in site plan annexed with sale deeds Ex.D1 and Ex.D2 and also mentioned in the aforesaid sale deed to be Municipal Committee gali 34 feet on the northern side of the suit property. The remaining suit of plaintiff has been rightly dismissed by the Id. lower court..."*.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant as the “plaintiff”; and respondents as the “defendants”.

3. Brief facts of the case are that the plaintiff had filed the present suit seeking permanent injunction restraining the defendants from causing any interference in the solitary rasta which opens towards the plot shown in the red colour with letters ABCD in the site plan, plaintiff being the owner in possession of the same.

4. The facts as pleaded in the plaint are that the plaintiff along with his brother is in possession of plot since the time of his forefathers. The plot has been shown with red colour with letters ABCD in the site plan bounded as North- Rasta of plaintiff, South- House of Deen Dayal, East- House of plaintiff, West- Public rasta 12 feet situated in Mohalla Nemri Niche, Mohindergarh. On the aforesaid plot plaintiff’s father was running an electrical workshop. After the death of his father plaintiff is running the workshop. The door of the house of plaintiff opens in the plaintiff's plot which is the only rasta for ingress and egress. A civil suit for permanent injunction bearing no.1154/604 of 1994/2000 titled as “Laxman Kumar Vs. Om Parkash and others” instituted by plaintiff’s father was dismissed on the ground that neither plaintiff nor defendants could prove their ownership over the property in dispute. The appeal and revision filed against suit no.1154/604 of 1994/2000 were dismissed. The defendants



have no concern with the ownership and possession of plaintiff over the plot in dispute. The defendants in collusion with each other and also with Rameshwar Dayal, Om Parkash son of Mange Lal who were defendants in civil suit no.1154/604 executed sale deed bearing no.1854 dated 09.08.2004 in favour of defendant no.1. The defendant no.1 further executed sale deed no.1504 dated 21.08.2008 in favour of defendant no.2. These sale deeds were executed during pendency of civil suit no. 1154/604. None of the aforesaid defendants had right to execute the sale deed. Now defendants are bent upon to take forcible possession of the plot in dispute from the plaintiff. As such, plaintiff prayed that defendants be restrained from interfering in his property shown by letters ABCD with red colour in the site plan annexed with the plaint. Defendants be also restrained from interfering in the ingress and egress from the rasta as shown in site plan. The aforesaid rasta is only rasta for ingress and egress of the plaintiff. The defendants be also restrained from raising any construction over the plot in dispute.

5. The suit was resisted by the defendants by filing written statement in which it was pleaded that plaintiff is neither owner nor in possession of the plot in dispute. Plaintiff has no shop over the plot in dispute. No door of plaintiff's house opens in the plot in dispute. Defendants have pleaded that Rameshwar and Om Parkash sons of Mange Lal who were owner of suit property vide sale deed no.1854 dated



09.08.2004 have sold it to defendant no.1. Thereafter defendant no.1 vide registered sale deed dated 21.08.2008 sold it to defendant no.2. The defendant no.2 by executing an agreement to sell dated 24.09.2012 has made defendant no.3 owner in possession. On the above basis, defendants submitted that defendant no.3 is owner in possession of the plot in dispute, therefore, suit be dismissed.

6. Ld. Counsel for the appellant submits that the defendants have no concern with the ownership and possession over the plot in dispute. The defendants collusively executed a Sale Deed No.1854 dated 09.08.2004 in favour of defendant No.1; who further executed Sale Deed No.1504 dated 21.08.2008 in favour of defendant No.2. It is submitted that on the basis of these forged and fabricated Sale Deeds, the defendants are bent upon to take possession of the plot forcibly from the plaintiff. It is accordingly prayed that the plaintiff being owner in possession of the plot since the time of his father, Civil Suit was wrongly dismissed.

7. Learned counsel for the appellant also submits that as per the report of the Local Commissioner (Ex.PW3/A), the plaintiff is shown to be owner in possession of the suit property. The rasta shown in the site plan (Ex.PW3/B) matches with the rasta in site plan (Ex.PW2/B). It is submitted that the rasta shown in site plan (Ex.PW2/B) is the only passage for ingress and egress of the plaintiff. It is accordingly prayed that the impugned judgments and decrees be set aside.



8. No other argument is made on behalf of the appellant.
9. I have heard counsel for the appellant and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellant/plaintiff for the reasons recorded hereinafter.
10. The plaintiff had filed present suit seeking permanent injunction restraining the defendants from causing interference in the rasta which opens towards the plot of the plaintiff as the plaintiff was owner in possession of the said plot. However, it is to be appreciated that in the plaint plaintiff has nowhere described the property in question. Only the boundaries of the suit property have been mentioned without identifying the property itself. It is only during his cross-examination that the plaintiff disclosed number of the suit property as B-III-353. Even in his affidavit in evidence, plaintiff has not mentioned the suit plot. Plaintiff has produced no document to show his ownership and possession over the said property. It was even claimed by the plaintiff that the property in question was his ancestral property. However, no evidence was led by him to prove the same.
11. Further, even if it is assumed for sake of argument, that plaintiff is owner of property describable as B-III-353, there is nothing to show that the adjoining plot is part of the said property. To the contrary, it is categoric finding of the learned Courts below that the rasta/public passage shown in site plan (Ex.PW2/B) vests in the Municipal Committee. As such,



general public including the plaintiff would have right on egress and ingress over the same. Even in the previous litigation between the parties, it was not disputed that the said rasta vests in the Municipal Committee. It has come on record that the father of the plaintiff had previously filed a Civil Suit No.1154/604 of 1994/2000 titled as “Laxman Kumar Vs. Om Prakash & Others” in respect of the present suit property, which was dismissed, as the plaintiff-side were unable to prove their ownership over the suit property. Even the appeal and revision thereof were dismissed.

12. Relevant findings of the learned trial Court are as under:-

*“13. Plaintiff appeared in the witness box as PW1 where he reiterated about the ownership and possession of the plot in question since the time of his father. He also testified about the institution of civil suit for permanent injunction by his father titled Laxman Kumar versus Om Prakash and Others which was with respect to property No. 353 ultimately it was dismissed. Presently, he has given the description of the boundaries of the plot in question but without specifying its number in the MC record, if any. For the very first time, he has given the details of this property in his cross-examination being it B-III-353. Even in his affidavit he did not bother to furnish its specifications. He further stated that his house is also situated in the property No. B-III-353 and as per LC report he is the owner in possession of the same. Sh. Bhim Singh, Building Inspector PW4 produced and proved MC record about the shop Ex. PW4/A to Ex. 4/C. He deposed that as per resolution No. 260 dated 21.05.1994, building map of Sh. Laxman son of Chandra Dutt Sharma had been sanctioned. He further admitted it to be correct that applicant, Sh. Laxman Kumar had not furnished any ownership proof of the property shown in the existing site plan Ex. PW4/B. He further expressed his ignorance as to who is the owner in possession of the property in question. At this juncture, it would be apposite to refer the observations of the Hon'ble High*



*Court made in the revision petition preferred by Laxman Kumar and contested through his Lrs Satish Kumar and Others against Om Prakash and others inter-alia the building plan was sanctioned by municipality on 21.05.1994 during the pendency of the suit. Consequently, sanction of the site plan by municipality during the pendency of the suit would not create title or possession over the vacant suit land in favour of the plaintiff and cannot used as piece of evidence against the defendants. It was further observed that Dalip Kumar PW1, clerk from Municipal Committee who proved the sanctioned building plan was examined by the plaintiff who categorically stated that there is no proof of the ownership of the property regarding which the building plan has been sanctioned. Thus, it is evident from the testimony of the plaintiff's own witness Dalip Kumar PW1 that mere sanction of the building plan does not depict title or possession of the plaintiff over the suit land. It is correct that plaintiff was depicted to be owner in possession of property No. B-III-353 in house tax registers. However, there is practically no evidence to depict that vacant suit land is part of Property No. 353. Self serving oral statement of plaintiff in this regard does not carry any weight.*

*14. As already observed, had the plot in question been the part of B- III-353, it must be depicted in the body of the plaint, but it is not mentioned so. Be that as it is, plaintiff has again failed to show that plot in question is the part and parcel of property No. B-III-353, even the site plan furnished by the plaintiff Ex. PW2/B does not correspond in material particulars. The measurement of the boundaries as mentioned in site plan Ex. PW4/B and site plan furnished by plaintiff Ex. PW2/B are at variance. The eastern side of the property depicted in site plan Ex. PW4/B is slightly slanting towards western side whereas it is straight in the site map Ex. PW2/B furnished by the plaintiff. Measurement of the boundaries is also different in both the site plans. In this situation, it cannot be said that it is one and the same property in both the site plans. Adverting to oral testimony of Arun Kumar, PW1 he claimed the property in question to be his ancestral property, however, he has*



*miserably failed to prove it. He further stated that he has not produced and proved any record establishing the property in question being his ancestral property. He stated that he came to know afterwards that Bharat Bhushan had executed the sale deed of the plot in question in favour of Krishan. He stated that as per MC record, plot in question is recorded in their name.*

*15. So far as the question of existence of door towards the property in question is concerned observations of the Hon'ble High Court in regular second appeal No. 1915 of 2007 would be fruitful that is; it is also significant to notice that the plaintiff himself stated that the dispute arose when he started opening a door on his building towards the vacant suit land. This testimony of the plaintiff himself would depict that there was also no door of the plaintiff's building towards the vacant land. This circumstance further falsifies the version of the plaintiff regarding his ownership or possession over the suit land."*

13. In view of the above, present appeal is **dismissed**.
14. Pending application(s) if any also stand(s) disposed of.

**06.05.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No