

(2012) 04 P&H CK 0170

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1710 of 2012 (O and M)

Jaswinder Singh

APPELLANT

Vs

Dhir Singh and Another

RESPONDENT

Date of Decision: April 20, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 91, 91(1)

Citation: (2013) 1 RCR(Civil) 521

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: D.D. Bansal, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 4680. C of 2012

1. The application is allowed and Annexures A/1 to A/3 are taken on record subject to all just exceptions.

RSA No. 1710 of 2012

Jaswinder Singh defendant No. 1 having been defeated in both the courts below has approached this Court by way of instant second appeal.

Respondent No. 1 - plaintiff Dhir Singh filed suit against defendant No. 1 - appellant and his father Roop Singh defendant - respondent No. 2 alleging that the plaintiff purchased plot measuring 18 marlas from defendant No. 1 vide registered sale deed dated 18.7.2001 which abuts common street lying on its south. Since the date of sale deed, the plaintiff is owner in possession of the aforesaid plot and is using the common street. The plaintiff has also raised construction over the said land after getting plan sanctioned and after taking loan from bank. Doors and windows of

plaintiff's house also open towards the aforesaid street. Defendants without having any right to encroach upon the street threatened to encroach upon the same. Plaintiff, therefore, sought permanent injunction restraining the defendants from doing so.

2. Defendant No. 2 was proceeded ex parte as after initially appearing in person on some dates of hearing, none appeared for him thereafter nor any written statement was filed.

3. Defendant No. 1 contested the suit. He admitted that he sold 18 marlas land in question to the plaintiff vide sale deed dated 18.7.2001. However, defendant No. 1 pleaded that boundaries of the said land as described in the sale deed are not correct and in fact there is no public street towards south of the said land. It was mistakenly mentioned in the sale deed. On the other hand, it is private street left by defendant No. 1 for his own personal use. Plaintiff or any other person has no right to use it.

4. Learned Civil Judge (Junior Division), Bathinda vide judgment and decree dated 4.10.2010 decreed the plaintiff's suit. First appeal preferred by defendant No. 1 has been dismissed by learned Additional District Judge (Fast Track Court), Bathinda vide judgment and decree dated 29.2.2012. Feeling aggrieved, defendant No. 1 has filed the instant second appeal.

5. I have heard learned counsel for the appellant and perused the case file.

6. It is undisputed that defendant No. 1 sold 18 marlas land to the plaintiff vide sale deed dated 18.7.2001. It is also undisputed that in the said sale deed, the disputed street was depicted towards south of the land sold. The plaintiff thus purchased the said land knowing that there was street towards south of the land which he could use. The sale deed executed by defendant No. 1 -appellant himself entitles the plaintiff to use the disputed street. Defendant No. 1 is estopped from denying the user of the said street by the plaintiff. Doors and windows of house of the plaintiff also open towards the said street. It also depicts that the plaintiff is using the aforesaid street.

7. Counsel for the appellant contended that the plaintiff himself left 4 feet wide vacant land towards south in his plot and therefore, defendant No. 1 could not object to opening of doors and windows in the house of the plaintiff in the said vacant land belonging to the plaintiff. The contention is completely meritless being beyond pleadings. No such plea was even raised in the written statement and therefore, no such contention can be allowed to be raised.

8. Counsel for the appellant also contended that width of the street is not mentioned in the sale deed. However, there was no dispute about width of the street. Plaintiff in the plaint alleged the width of the street to be 16-1/2 ft. Defendant No. 1 in his written statement did not dispute the same at all. Rather defendant No.

1 only pleaded that the street is private street. Thus, defendant No. 1 is deemed to have admitted the width of the disputed street. Consequently, the aforesaid contention is also not only beyond pleadings but in fact contrary to the pleadings. In view of admission of width of the street, contention that 4 ft wide portion thereof was left vacant by the plaintiff towards south of plot also falls for this added reason.

9. Learned counsel for the appellant argued that admittedly there is revenue record of the land in question but the same has not been produced by the plaintiff to depict that the disputed street is public street. This contention is misconceived and devoid of substance. There is recital about the street in sale deed executed by defendant No. 1 in favour of the plaintiff. Consequently, no other evidence was required to prove the existence of the street and right of the plaintiff to use the same.

10. Lastly counsel for the appellant contended that in view of section 91 of the CPC (in short, CPC), the plaintiff alone could not file this suit regarding public street and the suit could be filed either by Advocate General or with leave of the court, by two or more persons and therefore, the suit filed by respondent No. 1 - plaintiff only is not maintainable. This contention is also misconceived and untenable. While raising this contention, counsel for the appellant lost sight of sub-section (2) of section 91 CPC. It stipulates that nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions. Section 91(1) CPC confer an additional right and locus standi on two or more persons to file suit relating to public street with leave of the court. It does not bar the right of any person to file suit independently of this provision. In the instant case, the plaintiff in view of the sale deed executed in his favour by defendant No. 1 making provision for the disputed street has independent personal right to file the instant suit to seek protection of the disputed street from encroachment by the defendants. Consequently, the suit cannot be said to be barred by section 91 CPC.

11. For the reasons aforesaid, it is manifest that courts below have rightly decreed the suit of the plaintiff. Concurrent finding recorded by the courts below to decree the suit of the plaintiff is not shown to be perverse or illegal or based on misreading or mis-appreciation of evidence. On the other hand, the said finding is fully justified by the evidence on record and is the only reasonable finding that can be arrived at on appreciation of the evidence on record. Consequently, the said finding does not warrant any interference. No question of law much less substantial question of law arises for adjudication in this second appeal.

12. Before parting with the order, it has to be observed that the instant appeal is not only meritless but is completely frivolous. Defendant No. 1 himself sold plot to the plaintiff making provision for the disputed street and now defendant No. 1 without any justification disputed the right of the plaintiff to use the street giving rise to unnecessary litigation which is result of sheer dishonesty and greed of defendant No. 1. Such frivolous litigation has to be curbed. Accordingly, defendant No. 1 has to be subjected to costs for indulging in this frivolous litigation. For the reasons

aforesaid, I find no merit in the instant second appeal which is accordingly dismissed in limine with costs of Rs. 10,000/- to be deposited by appellant with the Registry of this Court within one month failing which the case shall be listed for this purpose.