

(2011) 09 P&H CK 0188

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2135 of 2005

Muna Lal and Others

APPELLANT

Vs

Surjit Kaur and Another

RESPONDENT

Date of Decision: Sept. 15, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Judgement

Mehinder Singh Sullar, J.

As the Courts below duly recapitulated, discussed the pleadings and evidence brought on record by the parties in detail, therefore, there appears to be No. necessity to again reproduce and repeat the same in the instant regular second appeal. However, concisely, the relevant facts, which require to be noticed for the limited purpose of deciding the present appeal and emanating from the record, are that Smt. Surjit Kaur wife of Dr. Rajinder Singh Thind Respondent No. 1-Plaintiff (for brevity "the Plaintiff"), filed the suit for a decree of mandatory injunction, directing Harjit Singh son of Daljit Singh and Ors. Appellant-Defendants (for short "the Defendants"), to vacate and remove all obstructions and structures, including the kiosks (Khokhas), in front of western wall of her (Plaintiff) house, from the site in dispute, with a consequential relief of permanent injunction, restraining them (Defendants) from causing any kind of hindrance or obstruction in future, on the disputed site.

2. The case set up by the Plaintiff, in brief in so far as relevant, was that she has constructed her house, after getting the site plan sanctioned from the Municipal Committee (in short "the MC"). The main gate of her house was kept on Jagdish Ashram Road and the western wall, abutting the Cantonment road, was provided with the side gate. She has every right to ingress or egress from the gate towards the western wall of her house on Cantonment road side and the Defendants have

No. right to obstruct the enjoyment of her property. The Defendants have placed their temporary kiosks (Khokhas) on the site in dispute, without any legal right. She asked them to remove the kiosks and not to make further construction, but in vain, which necessitated her (Plaintiff) to file the present suit.

3. Levelling a variety of allegations and narrating the sequence of events, in all, the Plaintiff claimed that she is owner and has every right to ingress & egress through the indicated gate of her house, but the Defendants have placed their temporary kiosks (Khokhas), in front of western wall, obstructing free use of her house. On the basis of aforesaid allegations, the Plaintiff filed the suit seeking a decree for mandatory/permanent injunction against the Defendants, in the manner indicated hereinbefore.

4. Defendant Nos. 1, 3 & 5 contested the suit and filed their joint written statement, inter-alia raising certain preliminary objections of, maintainability of the suit, cause of action and locus standi of the Plaintiff. The existence of gate towards western side of the house of the Plaintiff was denied. According to the contesting Defendants, they have placed their kiosks on the site in question, belonging to one Gupinder Singh Sibia for the last more than 25 years and are earning their livelihood since 1970-71.

5. Defendant No. 4 filed his separate written statement and contended therein that the competent civil Court has already decided the matter and since the Plaintiff is neither owner nor in possession of the disputed site, so, she has No. right, title or interest to disturb the kiosks of the Defendants. He has also taken the plea of adverse possession. It will not be out of place to mention here that the contesting Defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

6. Controverting the allegations of the written statements and reiterating the pleadings contained in the plaint, the Plaintiff filed the replication. In the wake of pleadings of the parties, the trial Court framed the necessary issues for proper adjudication of the case.

7. The parties to the lis, produced on record the oral as well as documentary evidence, in order to substantiate their respective pleaded stands.

8. The trial Court dismissed the suit of the Plaintiff, by virtue of judgment and decree dated 21.3.2003.

9. Aggrieved by the decision of the trial Court, the Plaintiff filed the appeal, which was accepted. The judgment and decree of the trial Court were reversed and her suit was decreed by the Ist Appellate Court, by way of impugned judgment and decree dated 18.5.2005.

10. The Appellant-Defendants did not feel satisfied with the impugned judgment and the decree of the Ist Appellate Court and preferred the present regular second

appeal. That is how I am seized of the matter.

11. After hearing the learned Counsel for the parties, going through the record with their valuable help and after deep consideration over the entire matter, to my mind, there is No. merit in the instant appeal in this context.

12. Ex facie, the arguments of learned Counsel that the suit filed by the Plaintiff was not maintainable and since she has failed to prove any legal right in the site in dispute and nuisance caused to her by the Defendants, so, the 1st Appellate Court committed a legal mistake in decreeing her suit, are neither tenable nor the observations of Hon'ble Apex Court in case Krothapalli Satyanarayana Vs. Koganti Ramaiah and Others, are at all applicable to the facts of the present case, wherein, both the appellate Court and High Court have concurrently held that the Plaintiff was guilty of acquiescence in that even though the wall was constructed to his knowledge in the year 1956. He approached the Court in the year 1965 and even in that year, he did not seek the prayer for removal of wall, which prayer was for the first time introduced in the year 1969. In that background, it was observed that No. relief can be granted to the Plaintiff to remove the wall.

13. Possibly, No. one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the Defendants in the present controversy, because at the same time, it was ruled that the Defendants therein were not entitled to dumping of rubbish (Tandu), adjacent to the western wall of the house of the Plaintiff.

14. As is evident from the record that the Plaintiff is owner and in possession of her house. The Defendants have placed their kiosks towards western wall of her house. The Plaintiff claimed that she has every right to ingress and egress to her house from the side of western wall, where the Defendants have placed their kiosks. The act of the Defendants in placing the Khokhas, abutting the western wall of her kothi, including the small iron gate (which is not denied by the Defendants), amounts to nuisance. The report (Ex.P6) of local commissioner corroborates the case of Plaintiff and existence of five wooden kiosks and recent constructions of pucca shops on the western wall of the house of Plaintiff. The existence of the structures is admitted by the Defendants. Admittedly, the kiosks were removed by the MC in the 1st week of February, 1998 and the Defendants again tried to raise construction on the disputed site.

15. It is not a matter of dispute that the site in dispute is a part of Town Planning Scheme No. 14 of Patiala, prepared by the MC under the provisions of the Municipal Act (hereinafter to be referred as "the MC Act"). After the publication of the indicated scheme on 19.12.1983, the MC developed the area and the roads. All the public roads vest in the MC, by means of provisions of the MC Act. The earlier judgment dated 22.4.1983 (Ex.D2), wherein it was directed that the Defendants, in the present suit, be not forcibly ejected, except in due course of law, would not come to the

rescue of the Defendants, because after making development Regular Second Appeal No. 2135 of 2005 -5-of the area in the wake of Town Planning Scheme No. 14, the kiosks were removed by the MC, but the Defendants have again placed the same on the disputed site, which is a public street and has vested in the MC.

16. The other submission of learned Counsel that since Gupinder Singh Sibia permitted the Defendants to place their kiosks on the site in dispute, so, the Plaintiff has got No. right in it, is not only devoid of merit, but misplaced as well. They did not produce any cogent evidence on record in this regard. Although the original writing of Gupinder Singh Sibia to that effect was stated to have been destroyed in the year 1977, but still, the Defendants could prove the same, by way of secondary evidence. That means, it is established on record that the site in dispute where they have placed their kiosks, is a part of public road/passage, which already vested in the MC and the Defendants are trespassers on it. The Ist Appellate Court, having scanned the evidence in the right perspective, has rightly negatived the claim of the Defendants, by virtue of impugned judgment dated 18.5.2005, which, in substance, is (para 12) as under:

The stand of the Defendants is that they were allowed to place khokhas by Sh.Gupinder Singh Sibia. The original writing had been destroyed in the year, 1977. However, No. secondary evidence was sought or permitted. The oral statement of Defendants that they were permitted by Sh.Gupinder Singh Sibia is not dependable, particularly when it has come in evidence that the municipal committee prepared a Town Planning Scheme No. 14 regarding the entire area including the disputed property. The roads are maintained by the Municipal Committee and apparently vest in it. The space between the roads and the private houses is also considered part of the road and the Defendants have failed to prove the ownership of any body else. They have also failed to prove that they were given licence by Sh.Gupinder Singh Sibia to place the khokhas on the said land. It being so, the status of the Defendants is that of trespassers. It has also come on record that the municipal corporation demolished the shop in dispute in the first week of February, 1998. The above noted facts clearly show that the Defendants are trespassers on the said land which vests in the municipal committee. They have placed the khokhas adjoining the western side wall of the property owned by the Plaintiff. It is an immediate nuisance to the Plaintiff and they suffer special damage as it reduces the value and utility of their building and also obstructed in the complete enjoyment of their property towards the western side. As such the findings of learned trial court on issues No. 1 and 2 are reversed and these issues are decided in favour of the Plaintiff/Appellant and against the Defendants/Respondents. Issues No. 3 and 4 have already been decided in favour of the Plaintiff/Appellant. In view of my findings on issues No. 1 and 2, the Plaintiff/Appellant has got the locus standi to file the suit. The findings on issue No. 5 are also accordingly reversed and this issue is also decided in favour of the Plaintiff/Appellant.

17. The learned Counsel for the Appellant-Defendants did not point out any material, much less cogent, to contend as to how and in what manner, the impugned judgment and decree of the 1st Appellate Court are illegal and would invite any interference in this relevant behalf.

18. Meaning thereby, the 1st Appellate Court has taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, it has rightly decided the controversy between the parties. Such findings of fact based on the appraisal of evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 Code of Civil Procedure, unless and until, the same are illegal and perverse. As No. such patent illegality or legal infirmity has been pointed out by the learned Counsel for the Appellant-Defendants, therefore, the impugned judgment and decree of 1st Appellate Court deserve to be and are hereby maintained in the obtaining circumstances of the case.

19. No other meaningful argument has been raised by the learned Counsel for the Appellant-Defendants to assail the impugned judgment and decree. All other arguments, relatable to the appreciation of evidence, now sought to be urged on their behalf, in this relevant direction, have already been duly considered and dealt with by the 1st Appellate Court.

20. Likewise, the entire matter revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since No. question of law, muchless substantial, is involved, so, No. interference is warranted in the impugned judgment and decree of the 1st Appellate Court, in view of the law laid down by Hon"ble Supreme Court in case [Kashmir Singh Vs. Harnam Singh and Another,](#).

21. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

22. For the reasons recorded hereinabove, as there is No. merit, therefore, the instant appeal is hereby dismissed as such.

23. Be that as it may, as it emerges from the record that the Defendants are earning their livelihood from their kiosks for the last many years, therefore, to me, it would be appropriate to grant some time to them to remove their kiosks and to place the same to some other alternative site. Such right has been duly recognized by the Hon"ble Apex Court in cases Prem Chand Trilok Chand and Ors. v. State of Haryana and Ors. (1998) 5 S.C.C. 213 and [Labha Ram and Sons and Others Vs. State of Punjab and Others,](#), wherein it was ruled that the Government has an inherent obligation to provide alternative site for carrying on their trade.

24. In this view of the matter, to my mind, the Defendants deserve sympathetic consideration by the MC and are entitled for a reasonable time to vacate their kiosks, in view of their virtual displacement from the place, where they were working over the years. To me, a period of six months is reasonable and is granted to the Defendants to remove their kiosks to some alternative place. The MC is accepted to sympathetically consider the claim of the Defendants to provide an alternative site to run their livelihood, on reasonable terms and conditions in this relevant behalf.