

(2014) 07 P&H CK 0486

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 2931 of 2012 (O&M)

Atma Ram

APPELLANT

Vs

Haryana State Agricultural
Marketing Board Jind

RESPONDENT

Date of Decision: July 23, 2014

Hon'ble Judges: Arun Palli, J

Bench: Single Bench

Advocate: Akshay Bhan, Senior Advocate and Pallavi Singh, Advocate for the Appellant;
G.D.S. Wasu, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Arun Palli, J.

Suit filed by plaintiff was dismissed by trial Court vide judgment and decree dated 27.05.2010. Appeal preferred against the said decree failed and was, accordingly, dismissed by learned first Appellate Court vide judgment and decree dated 12.04.2012. That is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

2. In a suit filed by plaintiff, he prayed for injunction simpliciter that defendants be restrained from raising any construction or a wall over the disputed land, which in fact was a way (rasta). A decree for mandatory injunction was also prayed for that, defendants be directed to dismantle the partial construction which already existed over the disputed rasta in question. It was averred that plaintiff was owner in possession of Gher measuring 351 sq. yd., situated in Uchana Kalan, Tehsil Narwana. There existed a rasta on the southern side of the Gher and there was no other way/rasta to access the same. So much so, even in the sale deed, vide which plaintiff had purchased the aforesaid Gher, it was recited that there was a rasta on the southern side. Further, there was a house of Dilbag Singh on the western side of the Gher of plaintiff to which there exists a way/rasta measuring 36 feet in width. It

was maintained that on 22.12.2005, defendants had constructed a wall 3 feet in height. Hence the suit.

3. Defendants, pleaded, inter alia, that land in question, which was purported to be a rasta by the plaintiff, was in fact owned by the Government of Haryana. The records of rights did not show that there ever existed any rasta between the Gher/plot of the plaintiff and the land owned by defendants, comprised in khasra No. 313/1. Naib Tehsildar conducted the demarcation on 26/27.06.2001 and it was found that plaintiff was in unlawful possession of land measuring 2 marlas, owned by defendants. Copies of Nishandehi, map of the site and measurement book was placed on record.

4. On an analysis of the matter in issue and the evidence on record, learned trial Court arrived at a conclusion that the rasta/way was being claimed by plaintiff on the basis of the map (Ex. P3), prepared by Draftsman Khushi Ram (PW 3). In his cross-examination, Khushi Ram (PW 3), admitted that the land on the southern side of the plot/gher was completely owned by Market Committee. Further, on a consideration of the documents produced by plaintiff i.e. copies of plaint (Ex. P4, and Ex. P5), report of Local Commissioner (Ex. P6) and the map produced in case titled "Sunil Kumar v. HSAMB" (Ex. P7), it was clear that there did exist a street on the northern side of the houses of Atma Ram as well as Sunil Kumar. However, the map (Ex. P3) did not show any such street on the northern side of the house of Atma Ram. Thus, learned trial Court was of the view that the documents placed on record by the plaintiffs were contradictory and no reliance could be placed upon the said documents. On the contrary, evidence produced by the defendants, showed that plaintiff was in unlawful possession of the land owned by defendants. Since Khushi Ram (PW 3) conceded the ownership qua the land on the northern side of plot/gher of plaintiff, it was observed that plaintiff had failed to prove his case. Resultantly, suit filed by plaintiff was dismissed by learned trial Court.

5. Being dissatisfied with the said decree, plaintiff preferred an appeal. Learned first Appellate Court reviewed the matter in issue, evidence on record and on an analysis thereof, concluded that there indeed existed no passage on the southern side of the plot/gher of plaintiff as the site in dispute formed part of khasra No. 303/1, and was owned by the State Government. Further, Market Committee had constructed 8 feet height wall and the alleged passage or space was not in existence any more. Still further, it was found that there was another passage on the northern side of the plot/gher of plaintiff. That being so, learned first Appellate dismissed the appeal vide judgment and decree dated 12.04.2012.

6. I have heard learned Senior counsel for the appellant and learned counsel for the respondents, and examined the judgments rendered by both the Courts below.

7. Learned counsel for the appellant could not point out or show as to how the findings recorded by both the Courts were preverse or contrary to the position on

record. Suffice it to say, the case set out by plaintiff was that there exists a rasta/passage on the southern side of his plot/gher and, therefore, defendants be injuncted from raising any construction over the said land, and consequently construction raised by them was required to be demolished. However, both the Courts have concurrently found that there indeed existed no rasta/passage on the southern side of the plot/gher of plaintiff. And, in fact the said land was owned by defendants, the position which has even conceded by Khushi Ram Draftsman (PW 3).

8. That being so, there hardly exists any ground, least plausible in law, to interfere with the decrees being assailed in the present appeal.

9. In the wake of the position as set out above and the conclusions that have concurrently been recorded by both the Courts below, appeal being devoid of merit is, accordingly, dismissed.