

(2014) 07 P&H CK 0691

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 856 of 1989 (O&M)

Harjit Singh

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision: July 22, 2014

Hon'ble Judges: Rakesh Garg, J

Bench: Single Bench

Advocate: Chetan Mittal, Senior Advocate and Kunal Mulwani, Advocate for the Appellant;
Samrath Sagar for Ved Parkash, Advocate for the Respondent

Final Decision: Allowed

Judgement

Rakesh Garg, J.

Appellant-Harjit Singh (since deceased) had filed the instant suit for permanent injunction restraining the respondent-Corporation from interfering in his ownership and possession in respect of the suit land (i.e. a piece of vacant land adjoining the property No. EJ-355) alleging the same to be integral part of the property of the appellant which was enclosed within the boundary of the house and further restraining the Corporation from demolishing the construction situated thereupon.

2. As per the averments made, the suit property including the land underneath the residential property of the appellant, bearing Municipal No. EJ-355, was a vacant space and was owned by him having been purchased by Basant Singh, grandfather of the plaintiff-appellant from Hukam Chand son of Palli Ram vide registered sale deed dated 04.11.1913 and said Hukam Chand son of Palli Ram purchased it from Dina Nath son of Dhiral Ram, resident of Basti Sheikh Darvesh, Jalandhar vide sale deed dated 21.01.1913. It is the further case of the appellant that House having MC No. EJ-355 was constructed by the appellant after sanction of site plan by the respondent-Corporation wherein also the suit property has been shown a part of the property of the appellant. It is further averment that the plaintiff is exclusive owner in possession of the vacant piece of land adjoining the house in dispute after the death of his father.

3. The suit was contested by the respondent-Corporation admitting that plaintiff was owner of house No. EJ-355. However, it was further averred that vacant land in dispute was a public street and vests in the Municipal Corporation Jalandhar, and therefore, it had got every right to protect its property. It was further averred in the written statement that the vacant land is not a part and parcel of the house No. EJ-355 and is a public street and the plaintiff has unlawfully encroached upon the area to the extent of 4" x 3 1/2" and accordingly, notice under the provisions of the Municipal Corporation Act was served upon the plaintiff, whereby he was asked to remove the encroachment but to no avail.

4. On the basis of the pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the plaintiff is owner in possession of the property in dispute? OPP

2. Whether the plaintiff is entitled to the injunction prayed for? OPP

3. Relief.

5. The parties led documentary as well as oral evidence in support of their respective case.

6. The suit of the plaintiff was decreed by the trial Court, vide its judgment and decree dated 21.11.1985, to the extent of restraining the respondent-Corporation from interfering into his peaceful possession over the property in dispute except in due course of law. However, it was observed that the plaintiff failed to establish his title over the suit land. The relevant part of the judgment of the trial Court reads thus:

8. The only point for determination, under this issue, is as to whether the plaintiff is owner in possession of the property in dispute or not. In so far as the ownership of the plaintiff in respect of the house is concerned, there is no dispute about the same. It is the case of the plaintiff that his grandfather purchased the plot vide sale deed dated 4.11.1913 from one Hukam Chand, photostat copy of the sale deed is Ex. P1. According to the sale deed vide which the property was purchased by Basant Singh, grandfather of the plaintiff, it was only taur and no construction existed therein. The boundaries of the taur which was purchased from Hukam Chand by the grandfather of the plaintiff, however, do not tally with the boundaries of the property in dispute regarding which the present suit has been filed by the plaintiff. No evidence has been led by the plaintiff that due to the passage of time, boundaries of the property have changed and now houses in the neighbourhood of the property in dispute have sprung up. Area of the taur which was purchased by the grandfather of the plaintiff from Hukam Chand has, however, not been mentioned in the sale deed, copy of which is Ex. P1. No doubt, it is written in the sale deed, copy of which is Ex. P1, that along with the taur, passage was also sold by Hukam Chand to Basant Singh, grandfather of the plaintiff. However, dimensions of

that passage, which is claimed by the plaintiff to be a vacant site allegedly purchased by his grandfather from Hukam Chand are not given. Under these circumstances, the Court is left in quandary to ascertain as to what was the area of the passage which was allegedly sold by Hukam Chand to Basant Singh, grandfather of the plaintiff. Under these circumstances, the plaintiff cannot successfully lay hands on the passage allegedly sold to Basant Singh his grandfather. Had the description of the property, which was sold to Basant Singh, been given, it could be ascertained as to whether the property in dispute is the ownership of the plaintiff or a particular area was a street. No doubt, certain plans have been placed on the record, which were got sanctioned from the Municipal Corporation, Jalandhar, by the grandfather of the plaintiff. In these plans the property in dispute has been shown to be the ownership of the plaintiff. Mere fact that in the plans which were got sanctioned from the Municipal Corporation, the property in dispute has been shown to be the ownership of the plaintiff, it does not confer any right or title on the plaintiff regarding the property in dispute. A person may wrongly show the property in the plan to be his ownership while getting the plan sanctioned from the Municipal Corporation, Jalandhar. At the time of sanctioning the plan no thorough inquiry is held by the Municipal Corporation regarding the ownership of the party. Municipal Corporation is only to sanction the plan after observing certain formalities. Plans do not confer any right or title upon the plaintiff in respect of property in dispute. Therefore, the plans do not go to help the case of the plaintiff.

9. On the other hand, evidence which has been led by the defendant to prove that the property in dispute is a public street is certainly cogent. File book in respect of the area in question was prepared, photostat copy of the file book is Ex. D1. File book is a public document which was prepared by the officials of the Municipal Corporation in the discharge of their official duties. It is duly sanctioned by the competent authority. Before preparing the file book, objections were invited. After dealing with those objections, the file book was given the final touch. Ex. D1 is the extract from Khasra Register in which the property in dispute bearing Khasra No. 11294/7358 has been shown as street. According to Ex. D1 copy of the Khasra Girdawari, the property in dispute has been shown to be a lane, and measurements of the same are given therein. Not only this, Ex. D2 Ferro copy of the file book also clearly goes to prove that the property in dispute is a Public street. Presumption of correctness is attached to the Khasra Register, copy of which is Ex. D1 and to the file book, pherro copy of which is Ex. D2. No cogent contrary evidence has been produced by the plaintiff to prove the incorrectness of Khasra register, copy of which is Ex. D1 and File Book, copy of which is Ex. D2. There was no reason on the part of Gurnam Singh (D.W. 1) and Jit Ram (D.W. 2) to depose against the interests of the plaintiff. They visited the spot after taking the file book with them and came to the conclusion that the property in dispute is a public street and has been encroached upon by the plaintiff. Statements of Gurnam Singh (D.W. 1) and Jit Ram (D.W. 2) are fully believable and can be certainly acted upon. However, evidence,

which has been led by the plaintiff does not go to prove his ownership in respect of the vacant site.

10. In view of the above discussion, it is held that the plaintiff is not the owner of the vacant site but he is in possession thereof. This issue is accordingly partly found and decided in favour of the plaintiff and partly against him.

7. It may further be noticed at this stage that the defendant-respondent did not prefer any appeal against the aforesaid judgment and decree of the trial Court.

8. However, against the aforesaid judgment and decree of the trial Court, an appeal was filed by the appellant which was dismissed by the first appellate Court vide its judgment and decree dated 03.01.1989.

9. Plaintiff-appellant filed the instant appeal, i.e. RSA No. 856 of 1989 and the same was admitted for regular hearing vide order dated 27.11.1989. The defendant-respondent also filed an appeal, i.e. RSA No. 1123 of 1989 challenging the aforesaid judgment and decree of the lower appellate Court. Both these appeals were taken up for hearing on 18.10.2006 and dismissed on merits, however, none represented the appellant in RSA No. 856 of 1989.

10. The appellant moved an application, i.e. RA No. 66-C of 2012 in RSA No. 856 of 1989. The said application was allowed vide order dated 05.12.2013 recalling the aforesaid order dated 18.10.2006 passed in RSA No. 856 of 1989 and restoring the instant appeal to its original number.

11. Before proceeding further, it may be noticed at this stage that RSA No. 1123 of 1989 filed on behalf of the defendant-respondent challenging the judgment and decree of the lower appellate Court has become final, whereby the relief of permanent injunction was granted in favour of the plaintiff-appellant and against the defendant-respondent, and thus, the only point for determination before this Court is as to whether the plaintiff is owner in possession of the property in dispute or not?

12. Thus, the following substantial question of law is framed for consideration of this Court in the instant appeal:

Whether the judgments and decrees of the Courts below, whereby it has been held that the plaintiff is not the owner of the property in dispute, are perverse and result of misreading of the evidence on record?

13. Learned counsel for the appellant has vehemently argued that the sale deeds Ex. P1 and Ex. P2, which are more than 30 years old and are coming from the proper custody, coupled with the site plans Ex. P3 and Ex. P4 sanctioned by the Municipal Authorities, fully prove the case of the appellant. Learned counsel has referred to the site plans, which clearly demonstrate that the suit property is a part of the property purchased by the appellant's forefathers vide sale deed dated 21.01.1913.

According to the appellant, the site plans have been duly sanctioned by the respondent-Corporation, wherein disputed site has been shown to be a part of the property of the appellant. Learned counsel for the appellant has further argued that the site plans are always sanctioned by the Municipal Authorities after verifying the title of the suit property. Counsel has also relied upon a judgment of this Court in the case of [Municipal Corporation and Another Vs. S.K. Motors and Others](#), wherein it has been held that once the Municipal Corporation has sanctioned the building plans and the respondent has raised construction pursuant to the said sanction, the Corporation cannot ask for demolition. Moreover, the Municipal Corporation has neither produced any record of the public streets in the area of Basti Sheikh Darvesh, Jalandhar nor any site plan/master plan of the area showing the same to be a public street has been placed on record, and the Field Book Ex. D1 cannot be relied as admittedly the same is amended from time to time by the respondent-Authorities at the request of the land owners.

14. On the other hand, learned counsel representing the respondent-Corporation has argued that the property in dispute is a public street which is proved from Ex. D1, i.e. Field Book prepared in discharge of official duties and kept in the Municipal records. According to the respondent, Ex. D1 is the extract from Khasra register, in which the property in dispute bearing Khasra No. 11294/7358 has been shown as street. According to the respondent, the property in dispute has been shown to be a lane and measurements of the same are given therein and this fact is also corroborated from Ex. D2 (Ferro copy of the Field Book), which goes to prove that the property in dispute is a public street, and thus, in the absence of any cogent evidence to controvert the aforesaid evidence produced on behalf of the respondent, the courts below have reached to the correct conclusion that the property in dispute is a public street and has been encroached by the appellant, whereas the evidence led on behalf of the appellant does not go to prove his ownership in respect of the vacant site and in view of the aforesaid, no interference is warranted in the findings recorded by the courts below. Learned counsel for the respondent has also argued that interpretation of any document, which is not in the nature of document of title, is not a question of law and is a question of fact, and thus, no substantial question of law arises in this appeal for consideration of this Court.

15. I have heard learned counsel for the parties and perused the impugned judgments and decrees of the Courts below.

16. There is no dispute with regard to ownership of the appellant in respect of the house bearing Municipal No. EJ-355, which admittedly belongs to the appellant. Further, the genuineness of the sale deeds Ex. P1 and Ex. P2 in favour of the appellant, on the basis of which suit land is being claimed, has not been disputed by the respondent-Corporation. However, it has been averred on behalf of the respondent that in the absence of description of the property and the fact that the

property in dispute do not tally with the boundaries of the property as described in the sale deed, it cannot be held that the appellant has successfully proved that the alleged passage was sold to Basant Singh and in the absence of description of the property which was sold to Basant Singh, it cannot be asserted as to whether the property in dispute is ownership of the plaintiff or a particular area was the street.

17. At this stage, it may also be noticed that site plans Ex. P3 and P4 have been duly sanctioned by the respondent-Corporation and there is no dispute with regard to ownership and possession of the appellant over the suit property underneath the residential property bearing Municipal No. EJ-355 as shown in the sanctioned site plans. The aforesaid site plans also depict the passage along with the constructed portion. Beyond the passage, no street or road has been shown which controverts the defence of the respondent that the property in dispute is a passage, as beyond the property of appellant this passage goes nowhere. The Khasra Register (Ex. D1) does not show conclusively that disputed property is a public passage. Even Gurnam Singh DW has stated that the said Register is prepared after 1980; whereas the appellant had raised the construction much prior. Moreover, admittedly there is no passage beyond the alleged passage, as no lane exists beyond the house of appellant. Admittedly, before sanction of any site plans, the Corporation inspects the site and also verifies the title. In fact, the Municipal Corporation does not sanction a plan without checking the ownership records. Moreover, the respondent has not produced the records of Public Streets and an adverse inference is also to be drawn against the respondent for not producing any record of public streets of the area. The courts below have lost sight of the fact that public streets etc. can be proved from the Master/Layout Plan of the city. No such plan has been produced on record.

18. It is not the case of the respondent-Corporation that the passage in dispute is a part of any property of the Municipal Corporation adjoining to the house of the plaintiff-appellant and the sole claim of the Municipal Corporation is to the extent of claiming the property in dispute a passage which could not be established. Thus, in these circumstances the only conclusion which can be drawn from the evidence is that the passage in dispute is an integral part of the property of the plaintiff-appellant which he purchased vide sale deeds (Ex. P1 and Ex. P2) and enclosed within the boundary of the house and which was duly sanctioned by the respondent-Corporation, and the judgments and decrees of the Courts below whereby it has been held that the plaintiff-appellant is not owner of the property in dispute are perverse being a result of misreading of the evidence on record. In view thereof, the substantial question of law, as framed, is answered in favour of the appellant and against the respondent-Corporation.

19. Resultantly, the appeal is allowed and the judgments and decrees of the Courts below are reversed to the aforesaid extent holding that the plaintiff-appellant is owner of the suit property.