

(2014) 07 P&H CK 0781

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 2452 of 2014 (O & M)

Bhagat Pal

APPELLANT

Vs

Paveen Kumar Sood

RESPONDENT

Date of Decision: July 14, 2014

Hon'ble Judges: Arun Palli, J

Bench: Single Bench

Advocate: Anuj Balian, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Arun Palli, J.

CM No. 5816-C of 2014

For the reasons set out in the application, delay of 17 days in re-filing the appeal, is condoned.

The application stands disposed of.

CM No. 5815-C of 2014

For the reasons set out in the application, delay of 03 days in filing the appeal, is condoned.

The application stands disposed of.

RSA No. 2452 of 2014(O & M)

1. Suit filed by the plaintiffs was decreed by the trial Court vide judgment and decree dated 08.02.2011. Appeal preferred against the said decree failed and was accordingly dismissed by the learned First Appellate Court vide judgment and decree dated 23.10.2013. That is how, the defendants are 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 the plaintiffs, they prayed for a decree for permanent injunction, praying that defendants No. 1 and 2 be restrained from forcibly and illegally occupying the land of common way (passage) shown in red colour in the lay out plan, which passes through in between the two properties i.e. House No. 72 and 73 and also in front of House No. 58, Palam Vihar-B, Ambala Cantt. And also from raising any wall or barricades over the land of the passage, blocking the approach of the plaintiffs and other residents of the locality of Palam Vihar-B and Ganesh Vihar, to their houses. Further, a decree for mandatory injunction directing the defendants from removing the obstruction in passage by demolition of walls ABCD shown in the site plan. It was averred that the plaintiffs were permanent residents and were owners of the houses situated in the said locality. Many of the residents had purchased the land for building their respective houses, from defendant No. 1, who happened to be a coloniser and a property dealer. At the time of the sale of the said land, defendant No. 1 and his associates colonisers had shown the lay out plan of the area in the year 1989-90. The said lay out plan showed a passage in between the property/House No. 72 and 73 and in front of House No. 58. The passage in question was the only way connecting the two colonies i.e. Ganesh Vihar and Palam Vihar. It was maintained that the plaintiffs had constructed their house about 10 to 12 years ago and were, thus, using the said passage since then. There was not any plot, shown as plot No. 72-A, in the first lay out plan. Defendants No. 1 and 2 attempted to usurp the land of the passage by encroaching thereupon. Plaintiffs got to know that a sale deed regarding some land including the suit passage had been executed in favour of defendants No. 3 and 4, who happened to be the parents of defendant No. 1. Defendants had raised two walls marked with letters AB and CD shown in the site plan. Thus, the suit.

3. Defendants, pleaded in defence that the plaintiffs might have purchased the plots in Palam Vihar for construction of their respective houses. But there exists no such passage as was being purported. However, there indeed exists a plot No. 72-A, which was now constructed with boundary walls. Further, the purchaser of the said plot had every right to construct the same as per his requirement.

4. On an analysis of the matter in issue and the evidence on record, learned trial Court arrived at a conclusion that defendants had admitted they had carved out a colony. They could not deny that the same was, in fact, carved out in consonance with the lay out plan. Nothing was brought on record to show that there existed plot No. 72-A, at the time when the other plots were allotted to the purchasers. Plaintiffs, admittedly being the residents of the locality, wherein, the suit property is situated, had a collective and personal interest in the common passage. It was observed that the defendants could not produce a single document on record to show that the suit property was a plot and not a passage. Defendants No. 3 and 4, who purportedly purchased the suit property, neither appeared in the witness box nor brought on record the original sale deed. Report of the Local Commissioner also supported the case of the plaintiffs. Thus, it was concluded that the suit property was left as a

passage at the time of carving out of the plots and the said passage exists between plot No. 72 and 73. Resultantly, suit filed by the plaintiffs was decreed vide judgment and decree dated 08.02.2011.

5. Being dis-satisfied with the said decree, defendants preferred an appeal. Learned First Appellate Court, reviewed the matter in issue, evidence on record in its entirety and found itself in concurrence with the view drawn by the learned trial Court and the findings recorded in support thereof. It was observed that Surinder Mohan Prashar-PW1, had deposed that he had seen the site plan Ex. P1 and the same was correct as per the position that exists on the plot. He had stated that Shri Atul Kumar Sharma had prepared the site plan after visiting the spot. He had further deposed that Ex. P2 and Ex. P3 were the photographs of the lay out plan displayed by defendants No. 1 and 2 on a sign board in the locality in question. He had testified that the residents of the locality had purchased the plots on the basis of the said lay out plan. Defendants had not disputed that the said lay out plan was displayed in the locality. In fact, the display board shown in the photograph Ex. P2 was installed in the park and the said photograph was indeed the photograph of the said board. Thus, it was observed that the photographs Ex. P2 and Ex. P3 and site plan Ex. P1 showed that the suit property was a passage and not a plot. In fact, existence of the passage was evident from the report of the Local Commissioner Ex. P6 and the site plan Ex. P7. Defendants, in supports of their case, had relied upon the sale deed Ex. D3 dated 05.06.1989, and the site plan attached thereto. However, it was observed that the site plan annexed with the sale deed Ex. D3 was not a certified copy. Document mark "Y" produced by the plaintiffs showed that it did not match with the site plan attached with the sale deed Ex. D3. Pursuant to the request of the counsel for the plaintiffs, records of Civil Misc. Appeal No. 129 of 2004/2005, decided on 18.01.2006, were requisitioned. The said file contained the attested copy of the original sale deed executed in respect of plot No. 73. Though, sale deed Ex. D3 was found to be the same as was appended with the said appeal, yet, the site plan appended with the sale deed Ex. D3, did not coincide with the site plan appended with the certified copy of the sale deed which formed part of the said appeal. Rather, the site plan contained in the said appeal revealed the passage towards east of plot No. 73. Thus, the learned First Appellate Court was of the view that no reliance could be placed upon site plan appended with the sale deed Ex. D3. Sale deed Ex. D2 did not contain the site plan at all. Further, document mark D1 did show that in between plot No. 72 and 73, there existed a plot No. 72-A, yet, the index of the said document did not show plot No. 72-A therein. Further, size of plot No. 72A shown in the said document was not equal to the size of plots No. 73, 74, 75 and 76. It was also not equal to the size of plot No. 72. Still further, the said document rather showed that towards the north of the purported plot No. 72, there was a road leading to Ganesh Colony. If suit property was a plot then there was no purpose or meaning to carve a road leading from plot No. 72A to Ganesh Colony. Thus, in effect, the said document showed that the suit property was a passage and not plot No. 72A. That being so, it

was concluded that the evidence on record established that the plaintiffs had proved the suit property as a passage. Obstruction of a public passage was observed to be a public wrong and to redress such wrong any member of the public could approach the Court of law. Resultantly, learned First Appellate Court dismissed the appeal vide judgment and decree dated 23.10.2013.

6. I have heard learned counsel for the appellants at length and examined the judgments rendered by both the Courts below. Learned counsel for the appellants could not show or point out as to how the findings recorded by both the Courts were perverse or contrary to the position on record. It appears that originally when the plots were sold in the colony, a passage was left in between House No. 72 and 73. However, years later, the said passage was sought to be blocked between two houses and converted into a plot and sought to be given a new number i.e. 72-A. As is discernible from the records, Ex. P2 and Ex. P3 are the photographs of lay out plan displayed by the defendants in the locality. Said photographs and the site plan Ex. P1, show that the suit property was shown as a passage and not as a plot.

7. In the wake of the position as set out above and the conclusions that have concurrently been recorded by both the Courts below, there hardly exists any ground, least plausible in law, to interfere with the decrees being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.