

**In the Court of Sh. Daljit Singh Ralhan, Additional District
Judge, Amritsar (UID No. PB0198)**

CNR No. PBAS010199352019

Case No. CA/467/2019



Presented on : 19-09-2019

Registered on : 20-09-2019

Decided on : 15.11.2022.

Amit Kumar son of Gopal Krishan, aged 39 years, resident of Gali Bagla, Moti Bazar, Amritsar, at present 724, New Amritsar House Fed Complex, G.T. Road, Amritsar.

...Appellant

Versus

1. Surinder Kumar son of Darsyarasi Lal c/o Payal Bakery, Sultanwind Road, Near Chungi, Amritsar.
2. Balwinder Singh son of Avtar Singh, resident of old House No. 56, New No. L-3/111, Gali no. 2, Jaspal Nagar, Sultanwind Road, Amritsar.

....Respondents

Civil Appeal u/s 96 of CPC against the judgment and decree dated 22.8.2019 passed by the Court of Ms.Mehak Sabharwal, learned Civil Judge, Junior Division, Amritsar whereby suit of the appellant-plaintiff has been dismissed.

Claim in Appeal: To set aside the impugned judgment and decree dated 22.8.2019 passed by the trial Court and to decree the suit of the appellant-plaintiff.

Present: Sh. Bawajit Marwaha, Adv., Counsel for Appellant.
Sh. J.S.Jaswal, Adv., Counsel for Respondents.

JUDGMENT

1. Appellant, who was plaintiff in the main suit, has filed this appeal against judgment and decree dated 22.8.2019 passed by the Court of Ms. Mehak Sabharwal, learned Civil Judge (Junior Division), Amritsar whereby suit of the appellant-plaintiff bearing CS No. 630/2017, CNR no. PBAS02-001371-2017 titled as “Amit Kumar Vs. Surinder Kumar and another” has been dismissed.

2. The facts put forth by the appellant are that the impugned judgment and decree under appeal are against law and facts and are not sustainable in the eyes of law and liable to be reversed. Impugned judgment and decree is based on conjuncture and surmises, deserved to be set aside. Learned trial court has not appreciated the oral as well as documentary evidence brought on record by the appellant, rather ignored the same. Learned lower court has neglected all the evidence and documents proved by the appellant. Learned lower court has not framed proper issues and has not decided the issues in its proper perspective. The learned lower court has reached at wrong conclusion. Suit of the plaintiff-appellant is liable to be decreed. It is contended that

the learned trial court has not appreciated evidence led on record in right perspective and had wrongly dismissed the suit of the plaintiff-appellant. Hence, the present appeal.

3. Notice of the appeal was issued to the respondents, defendants-respondents appeared through counsel and contested the appeal. Record of learned trial court was requisitioned and was received.

4. Perusal of record reveals that appellant-plaintiff filed suit for permanent injunction against the defendants for restraining the defendants, their attorneys, agents, workers, employees, privies and stooges etc., from illegally and unlawfully dispossessing the plaintiff from the plot property having length 68 feet breadth on from 37.7 feet total area measuring 300 sq. yds. surrounded on East: Temple, West: Bazaar, North: passage and South property of others, bearing Khasra No. 3506/575 full having area measuring 225 sq.yds. and Khasra No. 3507/575 min having area measuring 75 Sq. yds. situated in the area of Sultanwind Urban, Abadi Jaspal Nagar, Tehsil and District Amritsar, duly shown as 'RED' in site plan and also restraining the defendants from illegally, unlawfully and unauthorizedly interfering and/or inter-meddling into the peaceful possession of the plaintiff over any part of the plot property in question, on the averments that plaintiff had purchased the suit property from his father from previous owners namely Veena

alias Veena Kumari, Santosh alias Santosh Kumar, Seeta Rani alias Sita Devi all daughters of Rameshwar Dass, residents of Gali Bagla, Moti Bazar, Amritsar through their attorney Gopal Krishan s/o Late Rameshwar Dass r/o Gali Bagla, Moti Bazar, Amritsar, who is father of plaintiff. The sale deed was duly registered in the office of Sub Registrar, Amritsar on 8.12.2019. Since the purchase of plot/property in question, he is in possession of the same as owner in possession and enjoying the peaceful possession of the suit property. The suit property is adjoining to the temple managed by Sanatan Dharma Sabha Shiv Mandir Bagla Trust and father of plaintiff is the Chairman and Sarprast of the said trust. Defendants are notorious and bully persons of the society and are having links with antisocial elements and number of cases are registered against defendant no. 2. The defendants are having dispute with the father of plaintiff relating to the above said temple managed by Santan Dharam Sabha Shiv Mandir Bagla Trust and earlier defendants made a number of attempts against the above said trust and Temple but failed. Defendants with an ill intention in order to harass the plaintiff, want to take forcible possession of the plot property in question, which led the plaintiff to file the suit.

5. Upon notice of the suit, defendants appeared through counsel and filed their joint written statement raising preliminary objections inter alia that the suit is not legally maintainable. The plaintiff has not sued defendants in their official/trustee capacity as defendant No. 1 is one of the trust of Bagla Trust and defendant No. 2 is its president

who is managing the affairs of Shiv Mandir. Suit is bad for mis-joinder and non-joinder of necessary parties and the suit property is owned and possessed by Bagla Trust Santan Dharm Sabha and plaintiffs have not impleaded other trust members of Bagla trust. The plaintiff has no locus standi to file the suit, he is estopped by his own act and conduct from filing the suit, suit is not properly valued for the purpose of court fees and jurisdiction. The suit has been filed as a counter blast of the earlier suit filed by defendant No. 2 in the President Capacity of Bagla Trust against plaintiff which is pending in the Court of CJJD, Amritsar. The plaintiff has not come to the Court with clean hands and earlier one trust was created by the members/trustees which is known as Bagla Trust and defendant No. 2 is its President and defendant No. 1 is the trustee and it was created to manage the affairs of Shiv Mandir vide trust deed dated 13.8.2015. Shiv Mandir Property situated Sultanwind Road, opposite, Gobind Nagar, Amritsar was the ownership of forefather of plaintiff and his father Gopal Krishan Bagla and their family members and several decades ago, they had converted the same into Shiv Mandir and donated the same to the Managing Committee formed for the management and affairs of Shiv Mandir and had constructed a temple on the said property in which deities of Shri Shiv Mandir, Shir Hanuman Mandir, Smt. Mata Ji Mandir and Shri Radha Krishan Mandir are installed and general public/residents of locality and devotees visit this temple for paying their

obeisance for worship of god and goddess whose deities are installed there. Said Bagla Trust Sanatan Dharam Sabha whose chairman is father of plaintiff which is being run by defendant No. 2 being president who is managing, controlling, administering the said Mandir. To manage the affairs of said Mandir, one trust deed has been executed as already stated above which is registered in the office of Sub Registrar, Amritsar. On 14.8.2015 and this trust is consisting of 6 members, who are managing the affairs of mandir and looking after its property. Before that, some other trust was created in the year 1978, then in the year 2015. There is open space in the temple which is owned and possessed by Bagla Trust and even one passage which is 10 feet. Wide surrounded to Shiv Mandir has been left for general public and devotees/worshippers who visit this temple for ingress and egress which is now possessed by Bagla Trust. The Sukha Talab adjacent to Shiv Mandir is in existence for a period of more than 10 years which is being managed/looked after and controlled by managing committee of Shiv Mandir. It is a religious place and great sanctity is attached to the deities and people/worshippers who pay their obeisance in the said Mandir. Now intention of plaintiff and his father has become malafide and he is in connivance with his co associates want to make illegal construction over the said property, passage of 10 ft. wide and Sukha Talab, to which he has got no right to do so, as same is exclusive ownership and in possession of Bagla Trust. Due to this cause of action, the defendant No. 2 in the official capacity of Bagla Trust had already filed a suit against plaintiff and his father Gopal Krishan Bagla

which is pending in the Court at Amritsar and when plaintiff and his father filed joint written statement in the said suit, they have stated in preliminary objections that out of total 500 Sq. Yards of suit property, plaintiff and his father is the owner in possession of 300 Sq. yards vide sale deed dated 1.12.1999 purchased from Veena @ Veena Kumari and others. Thereafter, an amendment application was moved by defendant No. 2 in his official capacity seeking the relief of declaration vide which he said alleged sale deed has been challenged and prayer for cancellation of same was made as said sale deed is illegal, invalid, malfide, collusive, without consideration, inoperative, ineffective, null and void, not binding upon trust and is liable to be set aside. There is one passage which is 10 feet wide surrounded to the Shiv Mandir has been left for general public and devotees which is also possessed by Bagla Trust and surrounded passage of Mandir property is in existence since last so many decades which was reconfirmed by Asstt. Commissioner and through various reports made under letter dated 15.7.2015 with regard to the said passage in Khasra No. 3507/575 (0-8), 3506/575). On merits, it is stated that there is no plot over the suit property and only 10 feet wide passage is in existence for general public and Sukha Talab is owned and possessed by Bagla Trust. All other averments have been denied and a prayer for the dismissal of the suit has been made.

6. From the pleadings of the parties the following issues were framed by the learned lower court :

1. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
2. Whether the present suit is legally not maintainable ? OPD
3. Relief.

7. In order to prove his case, plaintiff Amit Kumar himself stepped into witness box as PW1 and also examined PW2 Rohit Gupta Draftsman, PW3 Rakesh Kumar, PW4 Rohit Kumar Clerk. Learned counsel for the plaintiff tendered into evidence documents Ex.PR1, Ex.PR3 to Ex.PR10 and thereafter closed the evidence.

8. In order to rebut the evidence of plaintiff, defendants examined DW1 Pawandeep Kaur, Clerk in the office of Deputy Commissioner, Amritsar and thereafter defendants closed their evidence.

9. After considering entire oral as well as documentary evidence brought on record by the parties, the ld. Civil Judge (Junior Division), Amritsar dismissed the suit filed by the appellant-plaintiff vide judgment dated 22.8.2019.

10. Aggrieved by the above decision, appellant-plaintiff filed appeal.

11. I have heard Sh. Bawajit Marwaha Adv., Counsel for Appellant, Sh. J.S. Jaswal Adv., Counsel for Respondents and with their able assistance have gone through record of the case.

12. Learned Counsel for appellant has contended that the impugned judgment and decree under appeal is against law & facts on the record. He further contended that the judgment and decree in question is not sustainable in the eyes of law and same is liable to be set aside. Impugned judgment and decree is based on conjuncture and surmises, deserved to be set aside. Learned trial Court has not appreciated the oral as well as documentary evidence brought on record by the appellant, rather ignored the same. Learned lower Court has neglected all the evidence and documents proved by the appellant. He argued that the learned lower court has failed to appreciate the fact that the respondents have failed to lead any cogent and convincing evidence to prove their version but the learned Lower Court has totally ignored all these facts and has wrongly dismissed the suit of the plaintiff-appellant. Ld. Counsel has further contended that the impugned judgment & decree is liable to be set aside and suit of the appellant-plaintiff deserves to be decreed.

13. On the other hand, learned counsel for the respondents while refuting the arguments raised by learned counsel for

the appellant has contended that judgment of learned Lower Court is legal & valid and does not require any interference by this court. He argued that the suit filed by the plaintiff-appellant is without any merit and learned lower court has rightly dismissed the suit of the plaintiff-appellant. He prayed that the appeal being devoid of merit be also dismissed. Prayer for dismissal of the appeal is made.

14. By way of filing the suit, appellant-plaintiff has claimed permanent injunction against the defendants for restraining the defendants, their attorneys, agents, workers, employees, privies and stooges etc, from illegally and unlawfully dispossessing the plaintiff from the plot property having length 68 feet breadth on from 37.7 feet total area measuring 300 sq. yds. surrounded on East: Temple, West: Bazaar, North: passage and South property of others, bearing Khasra No. 3506/575 full having area measuring 225 sq.yds. and Khasra No. 3507/575 min having area measuring 75 Sq. yds. situated in the area of Sultanwind Urban, Abadi Jaspal Nagar, Tehsil and District Amritsar, duly shown as 'RED' in site plan and also restraining the defendants from illegally, unlawfully and unauthorizedly interfering and/or inter meddling into the peaceful possession of the plaintiff over any part of the plot property in question.

15 To prove the case, it was incumbent upon the appellant-plaintiff to prove by leading cogent and convincing evidence that he is owner in possession of the suit land. PW1 Amit Kumar has

stated in his cross-examination has stated that on the left side of the suit property, there is one gali and on the right side is Shiv Mandir. In Ex.D7, there is reference of (0-8) Gair Mumkin Rasta in Khasra no. 3507/575. In this case, dispute is with regard to Khasra no. 3506/575 measuring 225 Sq. yards and 3507/575 Sq. yards area Sultanwind. Since it is suit for permanent injunction, so the dispute of title is not to be decided in this case. Besides this it is admitted fact of the parties that suit regarding declaration of title qua the property is also pending between the parties in the Civil Court.

16. The identification of the property is must for obtaining any relief with regard to the injunction. The appellant-plaintiff has pleaded in the head note of the plaint, that the suit property contains the following boundaries i.e. on Eastern side there is Temple, on Western side there is Bazaar. But the said boundaries does not tally with the site plan produced and proved on record by the appellant-plaintiff as Ex.P2/1. Perusal of the site plan Ex.P2/1 produced by plaintiff shows that there is passage between the plot and the temple and there is plot between the plot and the bazar on the eastern side. The appellant-plaintiff is claiming the breadth of the property as 37.7 feet, whereas in the site plan Ex.P2/1 shows the breadth of property is mentioned 29.7 ft. and total breadth including 10 ft. passage as 39.7 ft.. The respondents-

defendants have proved agreement Ex.DX executed by appellant-plaintiff Amit Kumar son of Gopal Krishan in favour of Sanatan Dharam Sabha Shiv Mandir Sukha Talab, Regd., Sultanwind Road, Amritsar. Perusal of the agreement Ex.DX shows that there is specific recital stating that on the Eastern side of the property of plaintiff, there is 10 ft wide passage, which abuts Mandir, and the said passage will remain as passage. As such, it is clear that appellant-plaintiff has admitted the existence of 10 ft. wide passage abutting the Mandir. This fact shows the concealment made by appellant-plaintiff while filing the suit. Hence, it is clear that the boundaries mentioned by the appellant-plaintiff in the headnote of the plaint does not tally with the boundaries mentioned in the site plan Ex.P2/1. Moreover, the appellant-plaintiff has failed to lead any cogent and convincing evidence to prove his exclusive possession over the suit property. Further, during the pendency of the case, appellant-plaintiff has entered into agreement Ex.DX with the respondents-defendants, whereby he alleged to have parted with the possession of the suit property and the same is stated to be handed over to the respondents-defendants.

17. Under these circumstances, it is clear that plaintiff has concealed the material facts and has failed to prove his exclusive possession over the suit property, so, he is not entitled to the relief of permanent injunction as prayed by him. As such, this contention of learned counsel for the plaintiff-appellant is devoid of merits.

18. From the above discussion, it is clear that the decision of the learned Lower Court is based on correct appreciation of facts and evidence on the file and the same cannot be said to be perverse. There is no ground to interfere with the judgment passed by learned Lower Court. Hence, appeal in hand is dismissed with costs and impugned judgment and decree passed by the ld. Trial Court are upheld. Decree sheet be drawn up accordingly.

19. Lower court record be returned with copy of this judgment. Civil appeal file be consigned to the record room.

Pronounced in open court.

Dated: 15.11.2022

(Anil J.W.)

(Daljit Singh Ralhan)
Addl. District Judge, Amritsar
UID No. PB0198.