

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****223****RSA-1597-2011 (O&M)****Date of decision: 11.05.2026****Balbir Singh****...Appellant(s)****Vs.****Dharampal and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Anish Setia, Advocate and
Mr. Surinder Singh, Advocate
for the appellant.

Mr. D.K.Sihag, Advocate
for respondent No.1.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the judgment of reversal; whereby suit filed by the appellant for declaration and injunction although decreed by the learned Civil Judge (Junior Division), Hansi, has been dismissed by learned Additional District Judge, Hisar.

2. It was pleaded in the plaint that Daut Ram, grandfather of the plaintiff was owner in possession of a plot which was inherited by father of the plaintiff and uncle of the plaintiff namely Sudha. From father of the plaintiff, the said plot was inherited by the plaintiff alongwith his brother, namely, Bir Singh. It was averred in the plaint that there was another plot in the adjoining area which belonged to one Patram deceased, who had died issueless; and he had given his plot measuring 315 sq.yds. to Harke Ram,



Ram Swaroop and the plaintiff i.e. plot measuring 250 sq.yds. was given to Harke Ram and Ram Swaroop; and remaining 65 sq.yds was given to the plaintiff. The plaintiff further averred that defendants had got plot measuring 250 sq.yds. from said Harke Ram and Ram Swaroop in exchange and started raising construction of their house. At the time of construction, they had put their rafters on the walls of the plaintiff at point/wall JK and IJ and when the plaintiff objected to it, the defendants requested the plaintiff to allow them to put their rafters on the said walls, by further stating that they had paucity of funds and they shall raise construction of their separate walls adjoining to the walls of the plaintiff after some time. However, they had not done so till date. Plaintiff wanted to fix a new gate at point AK in a passage shown by the letters ADJK in the attached Site Plan (hereinafter referred to as the 'disputed property') for entering to his residential house but defendants were not allowing him to fix the gate at that point. It was alleged that on 29.05.2005 when plaintiff started to fix a new gate on the disputed point, defendants alongwith their associates came at the spot with weapons and threatened the plaintiff. Hence, the present suit was filed on 07.06.2005.

3. Upon notice, defendants had resisted the claim of the plaintiff by asserting that the disputed property is a village common street from time immemorial which is 9 feet wide and 75 feet long and which is existing between the houses of the parties to the suit and some other persons of the locality and the plaintiff has got no concern with this public street being shamlat deh duly vested in Gram Panchayat Madan Heri; that



the plaintiff has got no right to construct any door or wall on the disputed property but the plaintiff wants to usurp the land of public street by including the same in his residential house. Denying the allegations, the defendants controverted the stand of plaintiff and prayed for dismissal of the suit.

4. Upon appraisal of the pleadings and the evidence led by the parties, the Civil Judge (Junior Division), Hansi had decreed the suit of the plaintiff with costs vide judgment and decree dated 20.12.2006 as follows:-

“In view of my findings arrived at on various issues above, the present suit succeeds and the same is accordingly decreed with costs as prayed for and the plaintiff is declared to be the owner in possession of the residential house marked with letters ABCDEFGHIJK which also includes the disputed property and the defendants are further restrained from interfering in the peaceful possession/use of the plaintiff of his residential house and from interfering in affixing a gate at point AK by the plaintiff in any manner forever. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

5. However, the Civil Appeal filed by the defendants was accepted by the learned Additional District Judge, Hisar vide impugned judgment and decree dated 17.02.2011; thereby setting aside judgment and decree dated 20.12.2006 passed by learned Trial Court and dismissing suit of the plaintiff. Hence, the present second appeal by the plaintiff.



6. It is *inter alia* submitted by learned counsel for the appellant that since the property in dispute is situated within the *lal lakir* of the village, therefore, the property in dispute has not been numbered and in order to prove the case set up by the appellant, he himself appeared in the witness box and produced Malhu Ram (PW-2), Jagdish (PW-3), residents of village Madan Heri, who have fully supported the version of the plaintiff/appellant and those witnesses have not been shattered in their cross-examination. The learned Trial Court relied on the evidence given by PW-2 and PW-3 and held that the appellant is owner to the property in dispute. The Trial Court also held that the defendants have failed to prove that the property in dispute is a public street and further the defendants/respondents have failed to prove that there exists any window or ventilation. Even no window or ventilation has been shown in the plan produced by the respondents which is Ex. D3. Thus, the learned Trial Court rightly concluded that the plaintiff is owner in possession of the property in dispute. The learned lower Appellate Court failed to appreciate the evidence brought on the file. Thus, the judgment of the learned lower Appellate Court is liable to be set aside.

7. It is further submitted by learned counsel for the appellant that earlier to the present litigation, one Shri Jai Pal filed a suit against the present appellant, wherein the present property in dispute was claimed to be a public street and in that litigation, it was held that the property now in dispute is not a public street and copy of the order and other support documents were placed as Ex. P1 to P6 on the file. While accepting the



appeal of the defendants/respondents, the learned lower appellate court has held that the plaintiff/appellant has not been able to produce any document to substantiate his plea regarding the ownership of the property in dispute. This observation of the learned lower appellate court is absolutely wrong and against the record Ex. P1 to P6 produced by the plaintiff/appellant to substantiate the plea that the property in dispute has not been held to be a public street. Thus, the learned lower appellate court has completely misread the evidence brought on record, rather ignored the documentary evidence brought on record on flimsy ground stating that the appellant cannot take help from the findings in the earlier suit because the present defendants were not party to the same. This, approach of the learned lower appellate court is absolutely wrong.

8. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 17.02.2011 passed by learned Additional District Judge, Hisar be set aside.

9. *Per contra*, learned counsel for the respondent/defendants vehemently opposes submissions advanced on behalf of the appellant and submits that plaintiff cannot take advantage of the previous Civil Suit; wherein it was held that disputed portion is not a street. Moreover, the present defendants were not a party to the said suit and, therefore, the findings therein are not binding upon the present defendants. It is further submitted that the plaintiff also failed to show that there ever existed any gate at point AK. In fact, by way of present suit, plaintiff is seeking to claim the entire street. On a Court query, learned counsel for the



respondent/defendants admitted that the suit property falls in lal dora. He accordingly prays that the present Appeal be dismissed being without merit.

10. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of learned counsel for the appellant.

11. Briefly recapitulated, the facts are that Plaintiff/appellant sought to be declared the owner in possession of a residential house (marked ABCDEFGHIJK in the site plan); and permanent injunction to restrain the Defendants from interfering with his possession or preventing him from fixing a new gate at 'point AK'.

12. The Plaintiff claimed that the residential house was inherited from his father and grandfather. He further claimed that a portion of the land (65 square yards) was given to him by one Patram, which adjoined his ancestral plot. He intended to fix a gate at point AK for residential security but was obstructed by the Defendants.

13. The Defendants (Dharampal and others) contended that the disputed area (marked ADJK) was not private property but a 9-foot wide public street that had existed from time immemorial and vested in the Gram Panchayat.

14. The Id. Civil Judge (Junior Division), Hansi, vide Judgment dated 20.12.2006, decreed the suit in favour of the Plaintiff. The court held that the disputed property was part of the Plaintiff's residential house and not a public street, relying partly on a previous litigation (Jaipal vs. Balbir) where a



similar claim of a public street was rejected vide judgment dated 25.01.1997 i.e. Ex. P-3 and also on the statement of Malhu Ram PW-2 and Jagdish PW-3 who have stated so that there was a plot of Patram abutting the property of plaintiff; who died issueless and who during his lifetime transferred his plot measuring 315 sq. yards in favour of his adoptive father Harke Ram and his natural father Ram Sarup to the extent of 250 sq. yards and in favour of the plaintiff to the extent of 65 sq. yards.

15. However, the Id. Additional District Judge, Hisar, vide impugned Judgment dated 17.02.2011 reversed the Trial Court's decision and dismissed the suit. The court observed that the Plaintiff failed to produce documentary evidence of ownership over the disputed portion and could not rely solely on the weaknesses of the Defendants' case.

16. However, in holding as above, the learned first Appellate Court has misread or ignored documentary evidence that established the disputed property was not a public street. It is the claim of the defendant/respondent that the disputed property is a public street and is being used jointly by the persons of the locality. Admittedly, as per findings of fact on record the defendants have not disputed the ownership of the plaintiff qua the residential house except for the portion ADJK i.e. the said disputed property. The defendants have questioned the ownership of plaintiff over portion ADJK and not the whole property ABCDEFGHIJK. Property ADJK was exclusively given to plaintiff by Patram which is in dispute. Rest of property is co-owned by Plaintiff and Bir Singh which is not in dispute. Though defendants have asserted that the said disputed



property is a public street, however, they have failed to adduce any evidence whatsoever in this regard. Defendants have claimed that windows, ventilators et cetera of various houses open towards the disputed property. However again, there is no documentary evidence to this effect. Even the Site Plan Ex.D3 relied upon by the defendants does not show any such windows, ventilators et cetera. Rather, as per Ex.D3 the Site Plan of the defendants, it is evident that the gates of the house of the plaintiff open on to the disputed property. Defendants have not even taken the evidence of any Local Commissioner or sought the appointment of Local Commissioner to substantiate their claim. Thus, the disputed property was rightly held to be not a public street.

17. Furthermore, in a previous litigation in Civil Suit 596-C-1993 titled as **Jaipal Vs. Balbir** decided vide judgment dated 25.01.1997 Ex.P3, finding of fact has already been given that there is no street marked in the Site Plan. Defendants have been unable to rebut the said findings of fact given in the previous Civil Suit. The First Appellate Court in its impugned judgment has dealt with the said judgment by merely stating that: *"The plaintiff cannot take any benefit from the findings of earlier suit titled as Jaipal Vs. Balbir decided on 25.1.97 vide judgment Ex. P3 where in it was held that disputed portion is not street. That was an injunction suit wherein relief of injunction was not granted to plaintiff therein namely Jaipal who stated in his cross-examination, as mentioned in para no.7 of the judgment Ex. P3, that he had no concern with the street in question. The present defendants were not party to that suit and findings of said suit are not*



binding on the defendants. It is settled preposition of law that the plaintiff has to stand on his own legs and he cannot take benefit of weaknesses of the defendants.” The aforesaid reasoning is weak and cannot be sustained. The first Appellate court has failed to give cogent reasons for rejecting the findings of fact rendered in the previous litigation.

18. Further, observation of the learned First Appellate Court in the impugned judgment that case of the plaintiff is entirely based upon the oral evidence that he is owner of the entire portion ABCDEFGHIJK as shown in the Site Plan Ex.P1, is not reliable as plaintiff has not led any documentary evidence in this regard, is also untenable in view of the admitted fact that suit property falls within the Lal dora area. On a Court query, this fact has been admitted by learned counsel for the respondents during argument. In view of the admitted fact that suit property fell within Lal Lakeer, plaintiff could only produce oral evidence in this regard; for which the plaintiff has duly examined PW2 and PW3. It is not disputed that Possession of the plaintiff is within Lal Lakir i.e. village habitation area; which typically lacks formal title deeds and is to be proved by long-term possession and oral testimony. In the present case, the same has been proved by oral evidence, led by PW-2 Malhu Ram and PW-3 Jagdish.

19. Learned First Appellate Court has also observed that plaintiff has failed to examine any person who could bring the Site Plan of the village or proved that 65 sq.yds. plot has been given to the plaintiff by Patram, is also incorrect as plaintiff had duly examined PW2 Malhu Ram and PW3



Jagdish son of Ram Swaroop, who have both deposed to the effect that 65 sq.yds. of the suit land was given to the plaintiff by Patram.

20. Learned counsel for the defendants/respondents is unable to controvert or dispute the above said facts and findings.

21. In view of the discussion above, the present Regular Second Appeal stands **allowed**. The impugned judgment and decree dated 17.02.2011 passed by learned Additional District Judge, Hisar is set aside; **and** suit of the plaintiff stands decreed.

22. Pending applications, if any, stand disposed of.

11.05.2026

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No