

CASE NO.:
Appeal (civil) 5654 of 2006

PETITIONER:
Avtar Singh and Ors.

RESPONDENT:
Gurdial Singh and Ors.

DATE OF JUDGMENT: 04/12/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

S.b. Sinha, J.

Leave granted.

Both these appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

The dispute between the parties arise in respect of a land situated at village Nardu, Teshil Rajpura butted and bounded as follows:

"North : House and compound of Avtar Singh and Jatinder defendants.

South : Kacha Passage

East : Kacha Passage and shamlat land

West : House and compound of Gurdial Singh"

Suit No. 283-T93/12.9.91 was filed by the respondents herein. Suit No. 28T/98/8.10.91 was filed by the appellants herein. Whereas the respondents filed a Suit for permanent and mandatory injunction, the appellants herein filed a Suit for permanent injunction restraining the defedants from interfering or dis-possessing them from the suit land, the description whereof was given and whereafter a site plan was filed. Whereas the suits of the respondents were dismissed by the learned trial Judge, the Suit of the appellants was decreed.

The parties preferred respective appeals from the said judgments and decree. The Appellate Court inter alia held that the land in question form part of a public street and the appellants before us have failed to prove that they had acquired any right, title and interest. Although in the Suit filed by the respondents herein the Appellate Court posed a wrong question as regard onus of proof but keeping in view the fact that in the Suit filed by the appellants an admission was made by him that the land in question was a Shamlat deh, we are of the opinion that it is not a fit case and for the reasons stated hereinafter, whether we should interfere with the impugned judgments.

We would like to set out here the findings of fact arrived at by the learned First Appellate Court:

"...11. PW1. Harchand Singh and PW2 Rajinder Singh have admitted in their cross-examination that a door, two windows and on parnala of the house of Gurdial Singh defendant open towards the site in dispute. Both of them have also admitted that electric wires also pass through the disputed land. PW.2 has also stated that an electric pole is there in the site in dispute. PW2

has gone to the extent to state that the site shown in site plans Exs. P1 and P2 was shamlat deh.

12. PW4 Jatinder Singh who has appeared as special attorney of no.2 has stated in his cross-examination that Gurdev Singh was having document of title with him. If that is so, then it can be said that the plaintiff have withheld the best evidence available with them regarding the ownership of the disputed site and adverse inference must be drawn against them.

13. As per the admission of PW2, the site shown in site plans Exs. P1 and P2 was shamlat deh. If that is so then it can be said that side could not be sold by a private person. Case of the defendants is also that part of the site purchased by the plaintiffs was shamlat deh. And they have shown it to be so in their site plan. Remaining portion of the site purchased by the plaintiffs was a passage common chowk.

14. The above discussion would lead to the conclusion that the trial court fell in error while holding that the plaintiff are able to prove their title over the site in dispute. In the connected appeal i.e. civil appeal No. 159-T of 20.3.99/15.2.99, the title Gurdial Singh and Ors. v. Avtar Singh and Ors., decided by this Court, appeal has been accepted and judgment and decree passed by the trial Court have been set aside and suit of the plaintiffs (defendants in the present case) have been decreed and the defendants (plaintiffs in the present case) have been directed to remove the encroachment made by them in the site in suit."

The question which arose for consideration in the said suit is as to whether the appellants have encroached upon a public street. The nature of the land being 'shamlat deh', indisputably could not have been a private property. Even from the boundaries of the suit land it appears that one side thereof is shamlat deh land and on two sides there exist katcha passage. All other attributes of a public street e.g. laying down of the electric wire was found.

Admission, it is well know, forms the best evidence. It may be that admission does not create any title. but the nature of the land can form subject matter of admission.

Section 58 of the Evidence Act postulates that things admitted need not be proved.

It may be that in their Suit the respondents herein did not call for the records from the State or the local authorities to show that the land in question was a public street but keeping in view the fact that the appellants' witnesses have admitted the said fact in their own Suit, we are of the opinion, the findings of fact arrived at by the First Appellate Court and affirmed by the High Court need not be interfered with.

For the reasons aforementioned, we find no merit in these appeals. The appeals are dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.