



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 02.09.2024
Pronounced on : 25.09.2024

RSA-4112-2019 (O&M)

MAAN SINGH Appellant
VERSUS
KIRANDEEP SINGH & ORS. Respondents

RSA-4098-2019 (O&M)

JARNAIL SINGH (SINCE DECEASED) THR LRS & ORS. Appellants
VERSUS
KIRANDEEP SINGH & ORS. Respondents

RSA-5452-2019 (O&M)

MALKIAT SINGH Appellant
VERSUS
KIRANDEEP SINGH & ORS. Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Suraj Kaundal, Advocate for
Mr. N.S. Chahal, Advocate for the appellants in all the RSAs.

ALKA SARIN, J.

CM-11309-C-2019 in RSA-4112-2019

1. For the reasons stated in the application, the same is allowed.
Delay of 102 days in refiling the appeal being RSA-4112-2019 is condoned.

CM-11278-C-2019 in RSA-4098-2019

2. For the reasons stated in the application, the same is allowed.
Delay of 125 days in filing the appeal being RSA-4098-2019 is condoned.

CM-15504-C-2019 & CM-15505-C-2019 in RSA-5452-2019

3. For the reasons stated in the application, the same is allowed. Delay of 125 days in filing as well as 28 days in refiling the appeal being RSA-5452-2019 is condoned.

RSA-4112-2019 and other connected cases

4. The present three separate regular second appeals being RSA-4112-2019, RSA-4098-2019 and RSA-5452-2019 have been preferred by the plaintiff-appellants challenging the judgment and decree dated 23.08.2017 passed by the Trial Court and the judgment and decree dated 13.10.2018 passed by the First Appellate Court. RSA-4112-2019 has been preferred by the original plaintiff No.1, RSA-4098-2019 has been preferred by the original plaintiff Nos.2, 3, 4, 5 and 7, while RSA-5452-2019 has been preferred by the original plaintiff No.6.

5. Brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for mandatory injunction for directing defendant-respondents No.1 to 3 to restore the passage illegally encroached upon by them in Khasra No.2973/2-14, Khewat No.83, Khatoni No.386 as per the copy of the Jamabandi for the year 2004-05 situated in the area of Kotkapura-4, H.B. No.129, Tehsil Kotkapura, District Faridkot correctly depicted in point CFGJ shown in horizontal red lines going from Rect. No.485, Killa No.15, 14, 17/24, 23/1, 23/2, 22, 22/2, 2, 3 as shown in the site plan attached with the plaint as also for permanent injunction for restraining the defendant-respondents No.1 to 3 from changing the nature of the passage by raising any type of construction or by any other mode. The suit was filed averring therein

that the *pacca* passage which is about 2 Karam bearing Khasra No.2973, Khewat No.83, Khatoni No.386 had been encroached upon by the defendant-respondents No.1 to 3. It was averred that the plaintiff-appellants have filed an application before the Sub-Divisional Magistrate, Faridkot on 15.06.2010 for getting the demarcation done, which was marked to one Bhupinder Singh, Kanugo Halqa, who went to the spot on 09.11.2010 and in the presence of both the parties demarcated the land and had given his report stating therein that the passage had been encroached upon and further that the same had merged into the land of the defendant-respondents No.1 to 3. As per the *Aks Sijra* prepared by Roop Singh, Patwari a passage existed in Khasra No.2973. It was further averred that no other passage leads to the houses of the plaintiff-appellants and other inhabitants of the village. It was further the case that defendant-respondent No.1 along with his brother/co-defendants had illegally encroached upon the *rasta* as they wanted to put pressure upon the plaintiff-appellants to sell their houses.

6. Written statement was filed by defendant-respondents No.1 and 2 stating therein that it was actually the plaintiff-appellants who had encroached the passage by constructing their houses and trying to shift the passage. It was further the case set up in the written statement that part of the *rasta* had wrongly been made *pacca* by the Nagar Council as one of the plaintiff-appellants namely, Zora Singh, was the Municipal Councilor and he got the passage made *pacca* in Killa No.11/1 instead of the proper place bearing Khasra No.2973. It was further admitted that the demarcation was conducted but the demarcation was without any notice to the defendant-

respondents No.1 to 3 and it was prepared behind their back. It was further the stand taken that no *pacca* points were fixed as per the instructions of the Financial Commissioner, Punjab and as per the High Court Rules and Orders.

7. Replication was filed by the plaintiff-appellants reiterating the averments made in the plaint and denying those of the written statement.

8. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled for mandatory injunction, as prayed for ? OPP
2. Whether the plaintiffs are entitled for permanent injunction, as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Relief.

9. The Trial Court vide judgment and decree dated 23.08.2017 dismissed the suit of the plaintiff-appellants. Aggrieved by the same three separate appeals were filed by the plaintiff-appellants which appeals were also dismissed by the First Appellate Court vide common judgment and decree dated 13.10.2018. Hence, the present three separate regular second appeals by the plaintiff-appellants.

10. The sole argument of the learned counsel appearing on behalf of the plaintiff-appellants is that on the basis of the demarcation report it was clear that the defendant-respondents No.1 to 3 had encroached upon the land

and that both the Courts have erred in dismissing the suit of the plaintiff-appellants.

11. Heard.

12. In the present case the plaintiff-appellant namely, Zora Singh, had stepped into the witness box as PW-1 and stated that the demarcation report was signed by him as was the attendance sheet. PW-2, namely, Harpreet Singh Pawar, Draftsman stepped into the witness box and deposed in his cross-examination that at the time of preparing of the site plan he did not check the Khasra Girdawari regarding the possession of the land. He further admitted that the *pacca* point was fixed by just holding the location of *pahi* and the *pacca* point was not shown in the site plan. It was further stated in the cross-examination that the *killas* and the *pahi* shown in the site plan was not made by him but were disclosed by the parties and that he did not verify the possession at the spot. He further admitted having written regarding the area on the statement of plaintiff-appellant Zora Singh. He also did not know which *mustil* the killa numbers fell under. Both the Courts concurrently found that the site plan, on the basis of which the suit was filed, was not prepared in accordance with the High Court Rules and Orders. It is further to be noticed that Bhupinder Singh, who stepped into the witness box as PW-3, admitted in his cross-examination that no summons were issued to the defendant-respondents No.1 to 3 regarding their presence. Learned counsel appearing on behalf of the plaintiff-appellants has not been able to convince this Court that the report on which sole reliance has been placed upon by the plaintiff-

appellants while filing the suit was prepared in accordance with law. The impugned judgments and decrees do not suffer from any illegality.

13. In view of the above, no question of law, much less any substantial question of law, arises in the present cases. The appeals, being devoid of any merits, are accordingly dismissed. Pending applications, if any, also stand disposed off.

25.09.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*