

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5518 of 2012 (O&M)

Date of decision: 06.04.2015

Gurdeep Singh

... Petitioner

versus

Gurcharanjit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sudhir Mittal, Advocate for the petitioner.

Mr. Ashok Sharma, Advocate for respondent Nos. 1 and 2.

K.Kannan, J.

The revision petition is at the instance of the defendants against whom injunction was sought by the plaintiff to restrain them from demolishing or removing a pathway that purported to exist on their lands. The plaintiff's contention was that there was a pathway running at the spot which existed upto khasra number 9/1 and a portion north of the said property was made by the plaintiff's vendor who were the performa defendants. The plaintiffs were therefore, seeking for a relief for not obliterating the alleged pathway drawn privately by the plaintiff's vendor. The Local Commissioner was appointed to inspect the property and report. He found that a passage had been drawn in the place mentioned by the plaintiff but was seen to be new. The respondent contended that the tyre marks were just drawn before the Local Commissioner's inspection.

The trial Court while dismissing the application found that the plaintiff had not shown the pathway to be part of defined passage in the revenue records. The trial Court also observed that the village revenue plan at Village Ladha depicting the existence of a passage did not show a passage as obtaining over the defendant's land in the particular khasra numbers referred to in the plaint. The Court, therefore, held that there was no prima facie case and declined the relief of injunction. The Appellate Court reversed it only on the observations

from the Commissioner's report that there seemed a passage and the plaintiff should therefore, have the benefit of injunction.

Learned counsel appearing on behalf of the petitioners contend that if the trial Court had examined the absence of prima facie case in favour of the plaintiff from the fact that neither the sale deed nor the village plans referred to existence of a passage, the Appellate Court could not have modified the same unless it had better reasons to substitute the trial Court's observations. The counsel would plead that even the Lower Appellate Court's power to intervene with the interim order could be justified only if the basis of findings of trial Court are flawed.

The rough sketch which is produced before me shows that the passage is the extension of the passage alleged to have been made by the plaintiff's vendor in property in Khasra No.9/1 in respect of which property the plaintiff admittedly is not owner. The plaintiff cannot force a compulsory burden on the property of the dependent without express grant or obtaining right in any one of the prescribed modes spelt out under the Easement Act. The passage cannot be said to be a detailed passage in the absence of entry in the revenue records. The plaintiff himself is not the owner of the land over which the passage is alleged to exist. Either way the relief of injunction which was refused by the trial Court could not have been modified by the Appellate Court without eliciting how trial Court's finding was wrong. I hold the order passed by the Court below as untenable and set it aside and restore the order passed by the trial Court.

The civil revision petition is allowed and the injunction sought by the plaintiff is declined.

06.04.2015
kv

(K.KANNAN)
JUDGE