

RSA No. 2262 of 2001

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**748 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 2262 of 2001

Date of Decision: December 02, 2015

Mohan Singh & another

.... Plaintiffs/Petitioners

vs.

Swaran Kaur & others

.... Defendants/Respondents

RSA No. 3031 of 2001(O&M)

Date of Decision: December 02, 2015

Mohan Singh & others

.... Plaintiffs/appellants

vs.

Swaran Kaur & another

.... Defendants/Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ranjit Saini, Advocate
for the appellants.

Mr. M. S. Kang, Advocate
for respondent Nos. 1 & 2.

None for respondent No. 3.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

By this judgment I shall dispose of RSA Nos. 2262 and 3031 of 2001, arising out of one common judgment and decree dated 31.01.2001 passed by learned Additional District Judge,

Yamunanagar at Jagadhri.

The short facts required to be noticed for the purpose of disposal of the present appeals are that the present suit has been filed under Order 1 Rule 8 as the interest of public at large are involved in the disputed property. Mohan Singh and others filed a suit against Swaran Kaur and Balwant Singh for mandatory injunction claiming that the disputed site ABCD is a passage which was left by the Consolidation Authorities at the time of consolidation. After the consolidation, the adjoining land of the said passage was converted into residential plots. This passage is the only passage for access to the residential houses of the plaintiffs. Defendant No.2 namely Balwant Singh claiming to be the owner of the said passage has sold the same to defendant No.1 Swaran Kaur vide sale deed dated 23.05.1977. Now defendant No.1 has planted trees in the said passage and has obstructed the said passage in the year 1990. Accordingly, the suit was instituted on 16.05.1991.

The suit was contested by Swaran Kaur-defendant on the ground that this disputed property was purchased by her from Balwant Singh on the basis of sale deed dated 23.05.1977 and she is owner of the same. She also filed a cross suit against the said plaintiff Balwant Singh, vide C.S No.163 of 1991/1996 seeking declaration to the effect that she is owner in possession of the disputed property.

The lower Court decreed the suit of plaintiff Mohan Singh etc. and dismissed the suit of Swaran Kaur, vide judgment and decree dated 04.11.1997, holding that disputed property marked ABCD is a passage and was left so by the consolidation authorities. Against the said judgment & decree dated 04.11.1997 two separate appeals were filed which were disposed of by Learned Additional District Judge, Yamuna Nagar at Jagadhri vide single judgment and decree dated 31.01.2001 and the findings of the lower Court were reversed. Consequently, the suit filed by Mohan Singh was dismissed and the suit filed by Swaran Kaur-defendant was decreed. Against this judgment Mohan Singh etc. has preferred two separate appeals.

I have heard learned counsel for the parties and have also gone through the case file very carefully.

It comes out that the short question involved in this case is as to whether the disputed property marked ABCD was left as a passage by the consolidation authorities as claimed by the plaintiff or whether Balwant Singh sold the same to Swaran Kaur vide sale deed on 23.5.77 without any right or title?

Before the lower Court no record of consolidation authority was proved to show that in the consolidation proceedings disputed property marked ABCD was left as passage to be used by the general public. The lower appellate Court has observed that

when consolidation takes place, passage is provided to every field and for a passage separate revenue number is assigned. However in this case in aks-shajra, it is shown as passage. From aks-shajras, where site ABCD is shown as passage, it cannot be assumed that the same was left by the consolidation authorities as a passage to be used by general public. There are concurrent findings of two Courts below that Balwant Singh carved out a colony. The plots on both the sides of the passage were purchased by Swaran Kaur and the site ABCD shown in the middle of the said properties was also sold by Balwant Singh. On behalf of Balwant Singh a copy of jamabandi for the year 1989-90 was produced to show the ownership of Balwant Singh over the said Khasra numbers. However, plaintiff has miserably failed to prove the khasra number of the said passage and to show that Balwant Singh was not the owner of the disputed property and that it was left by the consolidation authorities as passage as pleaded by him. It being so no fault can be found on the findings of the lower appellate Court record.

No substantial question of law arises as only findings and facts have been recorded.

Accordingly I do not find any merit in the present appeals.

Accordingly the same are dismissed.

December 02, 2015
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(KULDIP SINGH)
JUDGE