

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

**RSA No.1182 of 2006(O&M)
Date of Decision: 13.03.2015**

Rati Ram

...Appellant

Versus

Karan Singh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. JL Malhotra, Advocate,
for the appellant.

Mr. Anil Ghangas, Advocate,
for respondent Nos.1 & 2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This is defendant's second appeal. In the suit the defendants' own witness DW-5 during recording of his oral evidence spoke the truth against his calling party's interest that there indeed was a *rasta* falling between the western side wall of Rati Ram, appellant's house on the one side and the house of the plaintiff-respondents on the other, which lay at the end of a 15 ft. wide and 70 ft. long passage leading to the front door of the dwelling house of the plaintiff. Trouble started festering between the parties when the defendant-appellant made attempts to raise a construction on the *rasta*, which would have blocked ingress and egress of the property of the plaintiffs, which would have caused permanent injury to them. That is when the suit was filed for mandatory and permanent injunction etc. The Courts below have appreciated the evidence adduced on record including site plan (Exb.P-1) and the oral testimonies of the witnesses and have returned

concurrent findings in favour of the plaintiff/respondents entitling them to an injunction restraining the defendant/appellant from carrying out construction on the *rasta* leading to the house of the plaintiffs.

Both the parties at one point of time had a common wall. If the witnesses have spoken in favour of the existence of the *rasta* at site much prior to the institution of the suit and lying within the *firni* of the village then I find nothing wrong in the judgments and decrees passed by the lower Courts. The question which remains, disputed by the defendant, at the hearing of this appeal is as to the efficacy of the report of the Local Commission sent to the spot by the trial court *ex parte*, and which was objected to by the defendant/appellant, on which the learned counsel argues that the objections though filed against the report were not dealt with by the Courts below and therefore prejudice has been caused leading to a failure of justice.

Per contra, the learned counsel for the plaintiffs/respondents points out that the defendant/appellant was present at the time when the Local Commission was executed and in his objections, the appellant has not denied this fact, obviously for good and sufficient reason that his signatures were taken on the report of the Local Commissioner without any protest or demur. The appellant in his objections does not plead that the report was made behind his back and its result was against facts. Even if we discard the report of the Local Commissioner for a moment even then there is sufficient evidence to establish that the passage was a “*rasta-e-aam*” and therefore, I do not think that the decree drawn deserves to be upset only on account of the fact that the Courts have relied upon the report of the Local

Commissioner as well. It may be noted that this is a case where neither parties have demonstrable title to the land under *rasta* and therefore, it would serve the interest of justice if the *rasta* is left as it is so as to give access to the house of the plaintiff and prohibit any permanent obstruction being raised to block off the injured party for the beneficial use and enjoyment of his property. Besides, neither party have disputed that there are buildings on either side of the *rasta*, where people reside and have free access to and fro with a common right of passage. No ground for interference is made out. The determination of both the Courts below based on findings of pure facts after proper appreciation of evidence is not liable to be interfered with in appeal. No question of law, much less a substantial one, arises in this appeal and it is, consequently, ordered to be dismissed and sent to the record room.

13.3.2015
monika

(RAJIV NARAIN RAINA)
JUDGE