

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

RSA No. 2971 of 2012 (O&M)

Date of decision : 14.8.2015

Amrit Pal and another

... Appellants

VS

Municipal Council, Maur Mandi and another

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ashish Gupta, Advocate, for the appellants.

Rajesh Bindal, J.

This order will dispose of RSA Nos. 2971 and 2975 of 2012.

The plaintiffs are before this Court against concurrent findings of fact recorded by both the Courts below whereby the suit for mandatory injunction filed by them directing the defendants to remove the water pipe and pacca concrete from their private street, was dismissed. It was claimed by the appellants that the land was owned by them and it is not a public street. The same had never been used as public street and the respondents/defendants had no right, title or interest in the property in dispute, but still they were using the same.

The case of the appellants is that earlier M/s Laxmi Cotton and Dal Factory was functioning on the land measuring 5 kanals, 11 marlas within the Municipal limits of Maur Mandi. The said land was partitioned between the owners on 29.12.1995 and a private street of 20' wide was carved out in the middle of the land. Hence, it was not a public street. The appellants- plaintiffs are owners in possession of a plot in the said street which is entered in the house tax assessment register at Sr. No. 183 of 2003-2004 and for the subsequent years. The suit filed by the appellants for mandatory injunction was dismissed. The appeal preferred before the learned Lower Appellate Court was also dismissed. Now the appellants are before this Court.

It is admitted case of appellant- Amrit Pal that his brother had sold his share in the said property. He also admitted that many of the co-sharers had constructed their houses in the said property and are residing there. It was also admitted that one branch of State Bank of India, ATM Centre and City Public School were opened in the said street. He further admitted that shops have been constructed in front portion of the plots and public used to visit bank and ATM Centre without any obstruction. He further admitted that in the sale-deed for the plot purchased by him in his wife's name, the street has been shown as a public passage.

It has come in the evidence that State Bank of India, ATM and school are functioning in the said street, which had been made pucca by the Municipal Council with concrete on the demand of the residents of said locality and the people are using the same without any obstruction. The street was made by the Municipal Council with Bharat Nirman Fund on the applications (Ex. D2 and Ex. D3), of the inhabitants of the area. The appellants have not proved that the applications were false and forged documents.

Further when in the sale-deed vide which the plot out of the partitioned land was purchased by appellant Amrit Pal in his wife's name, the said street has been shown as a public passage, he cannot now be permitted to turn around and say that it is a private street.

In the light of aforesaid material on record, the appellants had not been able to establish that the street is a private one and not the public street.

In the absence of any material on record either in the form of revenue record or otherwise, once the appellants had not been able to prove their ownership, the concurrent findings of fact recorded by both the Courts below do not call for interference by this Court. No substantial question of law arises.

The appeals are, accordingly, dismissed.

14.8.2015
vs

(Rajesh Bindal)
Judge