

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

RSA No. 3473 of 2012 (O&M)

Date of decision : 1.10.2015

Gian Singh

... Appellant

versus

Malkiat Singh and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Deepak Arora, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff has challenged the judgment and decree of the learned Lower Appellate Court whereby that of the trial court was reversed and the suit for mandatory injunction filed by him, was dismissed.

In the case in hand, the appellant filed the suit for mandatory injunction directing the defendants to remove encroachment made over the street marked ABCD comprising in khewat no.3, khatuni no.9, khasra no. 172/2(1-8), khasra no. 172/3(0-4), khasra no. 172/1(0-9) of khatauni no.10 and khewat no.7, khatauni no.15, khasra no.67(1-6), situated in the revenue estate of village Naini Kot, Hadbast No. 500, Tehsil and District Gurdaspur, which is 5½ feet wide and which leads upto the main phirni of the village on its Northern side, caused by raising wall at point AB, EF and GH of the street as shown in the site plan, Ex.P2.

The claim of the appellant is that he is co-sharer in the suit property and khasra no. 172/3 falls to the street which has been made pucca with bricks by the Government. As per evidence produced by the plaintiff, Jamabandis, Ex. P1 and Ex.PB, Aks Shajra, Ex. PC, Jamabandi, Ex. P9 and Ex. CB Aks Shajra, shows that Khasra Nos. 172/1, 172/2, and 172/3, is joint property between Gian Singh, Malkiat Singh, Balbir Singh, Jarnail Singh, Manjit Singh and Jawand Singh. However, as per Ex. P-9, the suit property is joint between the parties and the nature of the land has been

shown as 'Barani Awal'. No passage has been shown in the property as per jamabandi produced by the plaintiff. The learned Lower Appellate Court has rightly held that the trial court has not concluded the description of khasra no. 172/3. It has only directed the defendants to vacate the khasra no.172/3 after proper location of the same by way of demarcation during execution. When the location of khasra no. 172/3 has not been specified, the decree passed by the learned Trial court is not proper and executable. Though the status of the parties as co-sharer has been proved, however, the existence of the street in khasra no. 172/3 has not been proved. Further no objection has been raised by other residents of the area with regard to blocking of street. Moreover, the appellant has excess to his house from the other side of street.

For the reasons mentioned above, I do not find that the findings recorded by the learned Lower Appellate Court are perverse. No substantial question of law arises. The appeal is accordingly dismissed.

1.10.2015
vs

(Rajesh Bindal)
Judge