

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 551 of 2012 (O&M)

Date of decision : March 9, 2015

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Amolak Singh

.....Appellant

Versus

Sadhu Singh and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. D.S Kahlon, Advocate for the appellant.

Mr. R.D Sharma, Advocate for the respondents.

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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?*

RITU BAHRI, J

C.M No. 1509-C of 2012

Prayer made in the application is allowed.

Delay of 303 days in filing the present appeal is condoned.

RSA No. 551 of 2012

This regular second appeal has been filed against the judgment dated 7.12.2010, whereby the appeal against the judgment and decree dated 15.10.2008 passed by the Civil Judge (Junior Division), Pathankot dismissing the suit of the plaintiff was dismissed by recording the concurrent findings of fact.

The plaintiff had filed a suit against the defendants restraining them from occupying and changing the user except as public passage (gair mumkin rasta) of the land measuring 0-15 marlas as entered in the Jamabandi for the year 1992-93 and shown in red colour in the site plan attached by letters ABCD and from preventing the plaintiff from using it as a public passage and for mandatory injunction directing the defendants to remove the wall and the hedge raised by them as shown in the site plan .

The dispute in the present case is with regard to land measuring 0.15 marlas shown in red colour in the site plan and marked by letters ABCD with a width of seven karams on the western side being a public passage and it was so earmarked for common purposes during the consolidation of holding in the village forming part of *Jumla Mushtarka Malkar Wa Digar Hissadaran Arazi Hazab Rasad Raqba* constituted after making rateable deduction in the lands of proprietors of the village including the plaintiff. The scheme of the village was duly approved by the competent authority. The land in dispute could not be put to any other use except as a public passage and the plaintiff as the inhabitants of the village and the public at large have a right to use the suit land as a passage and they have been using it as such from the very beginning. The defendants have no right to change the user of the suit land. The defendants in the absence of the plaintiff and through Banna Shikni have encroached upon part of the suit land and raised a wall and hedge over the same for the last 6-7 years and they are threatening

to encroach upon the entire suit land.

The defendants filed the written statement that the suit was not maintainable and was bad for misjoinder of party. On merits, it was stated that site plan filed by the plaintiff was incorrect and further denied that any gair mumkin rasta having width of 7 karams on eastern side and 3 karams on the western side exists at the spot. There was no encroachment. The suit had been filed to harass the defendants.

Defendant no. 2 filed a separate written statement and after the death of defendant no.2 vide order dated 28.11.2005 in the application filed on behalf of defendant no.2 for impleading his LRs the LRs of the defendant no.2 i.e (a) to (f) were impleaded as parties but despite service newly added defendants i.e . (a) to (e) did not appear and they were proceeded ex parte. Only LRs of defendant no.2 i.e (f) (g) and (h) appeared through their counsel.

After leading respective evidence, a Local Commissioner was appointed on the request of the plaintiff. The report of the Local commissioner was not in favour of the plaintiff. The trial Court held that the plaintiff did not lead any evidence to prove that he was the proprietor of the village. The land with regard to the passage belonged to the owners of the village and plaintiff did not examine any one except himself to prove this contention. Both the site plans Ex.P1 and Ex.P2 did not tally with each other. As per the report of the Local Commissioner, the passage from GBHC has been shown under possession of the plaintiff to the extent of 0-3 marla which

shows that the plaintiff has also encroached upon the passage for which he is seeking relief and other part of the passage i.e 0-12 marlas has been shown in possession of the defendant no.2 Gurmit Singh. Keeping in view that he had himself encroached upon the passage as is evident from the report of the Local Commissioner, the suit was dismissed.

The Lower Appellate Court on appeal has dismissed the appeal and affirmed the findings of the facts recorded by the trial Court. After going through the judgments passed by both the Courts, the plaintiff-appellant has not been able to lead any evidence to show that he was the proprietor of the village and that he had any right and he could seek an injunction against the defendants from encroaching upon the said land. Further as per the report of the Local Commissioner, the plaintiff was found encroaching upon the passage up to 3 marlas himself. The suit of the plaintiff has been rightly dismissed by the trial Court.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

March 9, 2015
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(**RITU BAHRI**)
JUDGE