

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3284 of 2013 (O&M)

Date of Decision.26.11.2015

Manga Singh

.....Appellant

Versus

Gurdev Singh and others

.....Respondents

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Gaurav Talwar, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J. (ORAL)

1. Delay of 178 days in refiling the appeal is condoned.
2. The appeal projects a point which is still really not a dispute before this Court. The decree in so far as it provides for injunction against dispossession of the plaintiff with reference to the property mentioned as ABCDEF is not in any way going to affect the defendant because the two Courts below have recorded the fact that the plaintiff's possession of the property immediately abutting the main East West street is not denied. The second portion of the relief in the suit is that the defendant shall be restrained from reducing the width of the street in any manner shown by letters EFGH. The existence of this passage is also admitted in the plan given by the defendant which was exhibited as Ex.DW1/C. The measurements of the property are approximate in the sense that the plaintiff has given the width of the lane that proceeds from the brick paved street to be 7' and 36' long along the line AF in the

plaint plan. The witnesses have also spoken about the measurements as 7 ½' and one witness has referred to the width as 10'. However, the point that was urged by the defendant was that the plaintiff has himself no property further North of the lane which is 7' broad but according to the plaintiff it was the property of Mehma Singh. The defendant would contend that it is his own property and the plaintiff was literally making out a case for Mehma Singh, who was neither a party nor a witness. There was evidence that the lane was in existence for more than 15 years prior to the suit and the lane had been also paved with cement and used by members of the public. The defendant would contend that the plaintiff cannot have any relief in respect of usage of passage over which he has no right. The nature of relief that is sought in the plaint is such that there is no restraint against the defendant from using the passage. When the existence of the passage itself is admitted fact and the nature of user of the property as public is brought through the evidence of a village official who has spoken to the effect that the lane has been cemented along the entire length and breadth and maintained by the Panchayat, I cannot find any prejudice as having resulted to the defendant. I have seen through the decree itself. The dispute with reference to the lane is for a relief from reducing the width of the street in any manner shown as AFGH.

3. The counsel for the appellant states that he has no intention of reducing the width and his only grievance is that the Mehma Singh is not examined. I do not find any virtue in a contention that Mehma Singh must have been examined as though character of property could change if he had been examined. The defendant cannot treat himself as

aggrieved by this judgment and I find no merit in the appeal. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

November 26, 2015
Pankaj*