

RSA No. 3823 of 2015 (O&M)

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

RSA No. 3823 of 2015 (O&M)

Date of Decision: December 05, 2015

Ram Kumar

...Appellant

Versus

Hazari & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sushil Sheoran, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Loharu, dated 27.02.2015, whereby, suit for permanent injunction filed by the plaintiffs to the effect that defendants be restrained from obstructing them from using the passage mentioned in the head note of the plaint and from changing the nature of the passage, stands decreed, appeal against which preferred by the appellant-defendant has been dismissed by the learned Additional District Judge, Bhiwani, on 02.07.2015.

It is the contention of the learned counsel for the appellant that the findings recorded by the Courts below are not based upon the proper appreciation of the pleadings and the

evidence brought on record. He has referred to the site plan (Ex.P-24) to contend that the disputed area which has been marked as A to B is not a passage, in fact, it has come in the report (Ex.P3A) of the Local Commissioner that the crop is growing on the said area and thus, the findings recorded by the Courts below being contrary even to the report of Local Commissioner, deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the impugned judgments but do not find any merit in the same.

A perusal of the judgments passed by the Courts below would show that on the directions issued by the trial Court, a Local Commissioner was appointed who has appeared before the Court as PW-4 and has proved his report Ex.P3A. In his statement, he has specifically stated that the passage is in existence in the joint property of the plaintiffs and the defendants. He has not stated in specific term that on the said passage, there is crop standing, rather it has been mentioned that there is crop adjacent to the passage. Mention has also been made with regard to the ash being lying there as also the wooden poles being raised that does not show that the passage is not in existence. The photographs which have been produced as Ex.P-7 to Ex.P-21 have been perused by this Court, which also reveal that there is a passage in existence on the spot. The evidence which has been led by the respondent-plaintiffs

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establishes that there is, in fact, a passage. The appellant-defendant has not been able to establish that apart from this passage, how the respondent-plaintiff were reaching their house or that there was some other passage going to their house. In view of the above, the judgments and decree passed by the Courts below cannot be faulted with.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record which do not call for any interference of this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.9392-C of 2015

In view of the order passed in the main appeal, the present application for staying the operation of the judgments and decree of both the Courts below, has become infructuous.

Disposed of as such.

December 05, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**