

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

RSA No.3918 of 2015 (O&M)

Date of decision: 18.08.2015

Bachan Masih

....Appellant

Versus

Iqbal Masih and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Samuel Gill, Advocate
for the appellant.

K.C. PURI J. (Oral)

This is an appeal directed by defendant-appellant against the judgment and decree dated 14.05.2015 passed by Ms. Anjana, Additional District Judge, Gurdaspur, vide which the appeal preferred by the defendant against the judgment and decree dated 23.09.2013 passed by Sh. Ajai Pal Singh, Civil Judge Junior Division, Batala was dismissed.

Briefly stated, Iqbal Masih and Sawinder Masih filed suit for permanent injunction restraining the defendants from demolition of the *pucca* built street Mark A, B, C and D, shown in the site plan.

The case set-up by the plaintiffs in the plaint is that Mark A, B, C and D, shown in the site plan is a public street. There is a drain passing from Point B to Point C, doors/gates of the house of plaintiffs opens in the street and plaintiffs along with

his family members is using the street. The house of the defendants is situated on the North and West side of the street and defendant cannot block the street. Hence this suit.

On put to notice defendant filed written statement pleading that the street Mark A, B, C and D, is a private street. The existence of drain at Point B to Point C was denied. It is pleaded that doors/gates of the house of the plaintiffs open towards Southern side of their house and street Mark A, B, C and D, is left by the defendants and that belong to defendants exclusively and the plaintiffs have no right to use the same.

From the pleadings of the parties, following issues were framed:-

- 1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.***
- 2. Whether suit property of the plaintiffs as shown in Mark ABCD is a private passage of the defendants? OPD.***
- 3. Relief.***

Plaintiff examined PW-2-Ashish Sharma, PW-3-Kiran Pal Singh and the plaintiff No.1 himself appeared as PW-1

In rebuttal defendant examined DW-2-Yusaf Masih, DW-3-Jaswant Singh and defendant himself appeared as DW-4, but no DW-1 was produced by the defendant.

The learned trial Court after appraisal of the evidence returned the finding on Issue Nos.1 and 2 in favour of the plaintiffs and consequently, decreed the suit of the plaintiffs vide judgment

and decree dated 23.09.2013 passed by Sh. Jai Pal Singh, Civil Judge Junior Division, Batala.

The appellant preferred appeal against the said judgment and decree dated 23.09.2013 which was dismissed by Ms. Anjana, Additional District Judge, Gurdaspur vide judgment and decree dated 14.05.2015.

The defendant-appellant has impugned both the judgments and decrees dated 23.09.2013 and 14.05.2015, in the present appeal.

The appellant in Para No.11 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

- 1. Whether in the facts and circumstances of the case the impugned judgments and decrees are illegal and perverse and unsustainable the same having been based on misreading of the pleadings and evidence on record?***
- 2. Whether the courts below have recorded a perverse findings by misreading the pleadings and evidence on record by holding that the street in dispute was constructed by the Gram Panchayat by affixing the bricks on the street about 15 years ago, whereas BDPO admitted that no record available with the Gram Panchayat?***

Learned counsel for the appellant has submitted that judgment of both the Courts below are the result of misreading

and misinterpreting the evidence of the file. The main glance has been placed upon the information given by BDPO that the Gram Panchayat has put bricks in the street about 15 years ago, but it is submitted that in the information itself it is mentioned that there is no such record. Any such information cannot be relied upon, so, the judgment of both the Courts below are perverse and are liable to the set-aside.

I have considered the said submissions but do not find any force in that submission.

It is case of both the parties that suit property is a street. The case of the plaintiffs is that it is a public street, whereas the case of the defendants is that it is a private street. It is settled law that public street can be used by any of the inhabitants of the village including the plaintiff. There is definite finding returned by both the Courts below that suit property is public street and as such, defendant cannot restrained the plaintiffs from using the said street.

On the other hand, defendants have failed to prove that suit property is a private street. So, there is nothing on the record that judgment of both the Courts below is the result of misreading and misinterpreting the evidence of the file and that both the judgments are perverse. So, in these circumstances, I have no hesitation in holding that no substantial question of law have arisen in the present case.

Consequently, the appeal is without any merit and the same stands dismissed.

18.08.2015
yakub

(K.C. PURI)
JUDGE