

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2108 of 2014 (O&M)
Date of decision: 30.4.2015

Faquir Singh @ Faquiria and others

.. Appellants

v.

Rulda Ram

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Maharaj Kumar, Advocate for the appellants.

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Rajesh Bindal J.

The defendants are before this court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by the respondent-plaintiff for permanent injunction restraining the appellants from obstructing the passage and also from cutting and removing trees and further for mandatory injunction directing the appellants to remove the encroachment, was decreed.

The suit was filed by the respondent-plaintiff claiming that the disputed site, being a common passage, the appellants-defendants had no right whatsoever to raise any kind of construction or create any kind of obstruction thereon. Both the courts below found merit in the contentions raised by the plaintiff and decreed the suit.

Learned counsel for the appellants submitted that the suit was bad as Gram Panchayat was not impleaded as a party. However, I do not find any merit in the submission made. Both the courts below concurrently found that there was previous litigation between the parties in which the appellants failed to establish that they are owners in possession of the property in dispute, though it was sought to be claimed. Faquir Singh filed

suit bearing No. 439T of 11.2.1999 against the respondent-plaintiff claiming ownership and possession of the property in dispute, which was dismissed on 10.1.2003. In the aforesaid case, reference was made to some earlier litigation between Faquir Singh and Devi Parkash and others, wherein the property in dispute had been shown as kacha passage. It was held in the aforesaid litigation that there was a common well at the site in dispute and the residents are using the same. The judgment of the trial court dated 10.1.2003 was upheld in appeal. Still further, the appellants had not led any evidence on record to prove their exclusive ownership and possession on the property in dispute or that they had any right to raise any construction there.

In the aforesaid factual matrix and appreciating the material on record, in my opinion, no illegality has been committed by the courts below in decreeing the suit against the appellants. Even if the Gram Panchayat was not a party to the litigation, still that does not confer any right on the appellants to encroach upon a public street or create any kind of obstruction thereon. They have rightly been directed to remove the encroachment.

No substantial question of law arises in the present appeal. The same is, accordingly, dismissed. Consequently, the accompanying application is also dismissed.

(Rajesh Bindal)
Judge

30.4.2015
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