

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

C.R. No.1191 of 2014

Date of Decision.16.12.2016

Tarlochan Singh

.....Petitioner

Vs

Gurdip Singh and another

.....Respondents

Present: Mr. M.S. Rana, Advocate
for the petitioner.

Mr. A.P. Kaushal, Advocate
for the respondent No.1.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is aggrieved of the judgment and decree dated 10.09.1983 whereby the following decree was passed:-

“Suit for permanent injunction to the effect that the defendants be restrained to pass ‘AAD’ or dig any sort of ‘ADD’ through Kh. Nos.1198/588/10-10, 1199/588/2-11, 589/9-6, 1202/596/11-2, as entered in Khata No.232/486 for the jamabandi of the year 1979-80, situated in village Rehana Jattan Teh. Phagwara, Distt. Kapurthala as these Kh. Nos. belong to the plaintiffs and the defendants be also restrained to dig or to pass any sort of ‘ADD’ along with the passage showed red in ‘Naksha Aks’ because the defendants have got no right title or interest whatsoever nature. The defendants be also restrained not to dig or pass any sort of ‘ADD’ for taking the water to their fields in the passage which is shown red in the Naksha Aks, attached with the plaint.

Rs.140/-

The suit coming on this day for final disposal before me in the present of Sh. Sardha Ram, counsel for plaintiff and sh. S.N.Chopra, counsel for the defendants it is hereby ordered that the suit of the plaintiffs succeeds and the same is hereby decreed. The parties are left to bear their own costs.”

Learned counsel appearing for the petitioner submits that the aforementioned decree was violated including that of khasra No.590 though not mentioned in the decree. The Courts below have committed illegality and perversity and the application moved for appointment of local commissioner has erroneously been dismissed. Further evidence brought on record leaves no manner of doubt that there was violation of judgment and decree and the application moved under Order 21 Rule 32 CPC ought not to have been dismissed.

Per contra, Mr. A.P. Kaushal, learned counsel appearing for the respondent No.1 submits that the petitioner-plaintiff/decreed holder failed to lead any evidence in respect of the alleged encroachment. Even the order dismissing the application for appointment of the local commissioner has not been challenged in this Court. Having failed to prove the alleged breach, rightly so, the petition has been dismissed.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel appearing for the petitioner. It was incumbent upon the petitioner to ascertain the alleged violation by taking the aid of the local Kanungo by moving application before the competent authority i.e. the Tehsildar and after having done so, could have moved an application. Mere

not prove the alleged violation. In my view the petitioner-plaintiff has miserably failed to discharge the onus of proving the alleged breach, rightly so, the application under Order 21 Rule 32 CPC, has been dismissed.

For the reasons aforementioned, I do not intend to differ with the order under challenge. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

December 16, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No