

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

RSA No.3856 of 2010 (O&M)

Date of decision : 17.08.2016

Avtar Singh and another

...Appellants

Versus

Rajender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Amarjit Markan, Advocate with
Mr. Kanwal Goyal, Advocate for appellants.

Mr. Raj Kumar Gupta, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The Counter Claimant is aggrieved of the findings rendered by the lower Appellate Court vis-a-vis status of the respondent-plaintiff as Licensor.

Mr. Amarjit Markan, learned counsel assisted by Mr. Kanwal Goyal, learned counsel appearing on behalf of appellants submits that respondent-plaintiff instituted a suit for prohibitory and mandatory injunction seeking restraint order against the appellants-defendants in respect of land measuring 15 kanals 11 marlas comprised in Khewat

No.67//8/2 (7-11), Khewat No.1311/1298, Khatoni No.751 and 754, situated in Village Jamalpur Sheikhan, Tehsil Tohana, District Fatehabad on the premise that the plaintiff is in exclusive owner in possession over the suit land and having threat for forcible interference into the possession, in fact on 28.05.2005 intended to encroach upon the disputed property. He submits that suit aforementioned was filed on 06.06.2005 and with the consent of the parties, Local Commissioner was appointed. The compromise was arrived on 11.06.2005. Local Commissioner visited the spot on 13.06.2005 and close the existing rasta towards the southern side and carved out towards the northern side bearing following revenue No.67//9/1, 8/1, and 67/7. The appellants-defendants have also set up a counter claim with regard to Killa 67//15 and 67//16 that the plaintiff be restrained from interfering into the peaceful possession and restraint order qua the forcibly interference and dispossession qua house in question. The trial Court dismissed the suit and counter claim filed by the appellants-defendants was decreed whereby the plaintiff was restrained from interfering and to use the passage existing on the northern side of the Killa No. aforementioned for ingress and egress of houses situated in Killa No.67//15 and 67/16. The plaintiff filed the appeal against the common decree. The appeal though was dismissed and the findings of the trial Court qua the counter claim was upheld but the lower Appellate Court allegedly recognized the status of the plaintiff as of licensor and that of the Counter claimant-defendant as licensee without examining the fact that aforementioned khasra numbers are not in ownership of the plaintiff. In fact khasra No.67, Killa Nos.7, 8 and 9 are not owned by the plaintiff as the counter claimant is co-owner and killa

Nos.7 and 9 is in ownership of some third party and even 8/1 also is not in ownership of plaintiff. Thus in view of the aforementioned factual aspects, liberty could not have been granted to the plaintiff to seek revocation of the licence. It is in these circumstances, the present appeal has been filed, though decree is in favour of the appellant-counter claimant and thus urges this Court for expunging of the findings rendered by the lower Appellate Court.

Mr. Raj Kumar Gupta, learned counsel appearing on behalf of respondent No.1 submits that compromise was not adhered to by the counter claimant. The rasta was already in existence and the injunction was sought in respect of khasra number as mentioned in the plaint i.e. 15 kanals 11 marlas comprised in Khewat No.67//8/2 (7-11) and Khewat No.67/3 and as well as khewat No.1311 and 1298. He submits that findings rendered by the lower Appellate Court vis-a-vis licensee is perfectly, legal and justified and do not call for interference and urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, findings rendered by the lower Appellate Court regarding which the appellants-defendants qua the counter claimant is aggrieved of reads thus:-

“Now coming to another aspect that the rasta which was found by the local commission towards north of khasra no.8/2 was carved out and the defendants have any right of easement to use that path or the defendants were using that path by obtaining licence from the plaintiff to use the said rasta. To arrive at a rightful conclusion initially the report

of local commission is to be considered. The trial Court vide its order dated 8.6.2005 has directed the local commission to inspect the spot and submit his report regarding existence of state of affairs after giving notice to the parties. Therefore, in these circumstances, it is quite clear that the local commission was required to give his report regarding existing state of affairs. Now while discussing the report of local commission, the local commission went to the disputed place and submitted his report Ex.DW2/D and the site plan Ex.DW2/C. By the cumulative reading of the aforesaid two records at the time of visit of local commission, no rasta was found to carved out as claimed by the defendants during consolidation. A compromise was arrived at between the parties, the rasta, which was towards south of 67//8/2 was closed and a new passage was left by consent of the parties towards north of 67//8/2. In these circumstances to some extent the local commission has exceeded the direction, which was given to him. But it does not mean that his report may be ignored in toto. But arguments of learned counsel for the appellant that the report of local commission should be ignored in toto is not tenable because the report may be considered to the extent of existing state of affairs and as per report of local commission on the date of his visit, there was no rasta towards south of the khasra no.67//8/2 and a rasta was found towards north of khasra no.67//8/2. Therefore, in these circumstances on 13.6.2005 rasta towards north was found. As far as contention of counsel for the appellant that their exist no rasta towards south is concerned, it is quite convincing but the defendants have taken a specific plea that there was a compromise between the parties and thereafter rasta towards south was closed. Therefore, some new facts emerged after filing of the suit and therefore the

present controversy between the parties is to be considered in light of changed circumstances. The law is well settled that during pendency of suit if there are change in some facts and there is a change of circumstances the court can take note of that. Therefore, in these circumstances, the court can take note of the fact that there is a dispute between the parties regarding user of rasta towards north of khasra no.67//8/2. As far as existence of the said rasta is concerned, the rasta was found by the local commission when he had visited the spot, therefore, it is to be seen now as to whether the defendants have right to use that path as a matter of right or that path was given by the plaintiff to the defendants like a licensee or in other capacity. To arrive at a right conclusion none of the parties have led evidence regarding nature of the rasta and the exact terms of the compromise arrived between the parties. In these given circumstances, it was incumbent upon the defendants to prove that in what capacity they have got a right to use of rasta towards north of 67//8/2 but no clear and cogent evident was led by the defendants. Therefore, in these circumstances, it was incumbent upon the defendants to establish that they were using the said rasta as a licensee as easementary right or any other right. The defendants in their pleadings have stated that they are using said rasta as right of easement towards south but by relinquishing their right towards south, the defendants have lost their right to use the path towards south. As far as path towards north is concerned, from the evidence led by the parties, it appears that the said rasta towards north, which was found to be in existence at the time of visit of local commission was permitted by the plaintiff to be used by defendants as licensee. Therefore, in these circumstances, the status of defendants to use the aforesaid rasta is that of licensee and

they have a right to use the said rasta till the aforesaid license is revoked by the plaintiff. By the documents available on the file and by the pleadings of the parties the said licence has not been revoked by the plaintiff after 13.6.2005. Therefore, in these circumstances in my opinion the plaintiff without revocation of the said licence to use as rasta towards north of khasra No.67//8/2 and 3 cannot claim injunction to restrain the defendants. Therefore, with slightest variation from opinion of learned trial Court, the present appeal is hereby dismissed with the observation that the plaintiff is owner in possession of the suit land as detailed and described in the head note of the plaint and the defendants are using rasta towards north i.e. 67//9/1, 67//8/1, 67/7 as licensee. Therefore, the issue no.1 is decided partly in favour of the plaintiff and partly in favour of the defendant. In view of the aforesaid finding given by me the defendants are found to be licensee. Therefore, they can use that rasta till the licence is revoked by the plaintiff. Therefore, this issue is decided accordingly.”

I am of the view that the new passage carved out on the khasra numbers i.e. Khewat No.67/9/1, 67//8/1 and 67/7 are not in ownership of the respondent-plaintiff. In view of this fact, I failed to understand how the lower Appellate Court adorned the status of Licensor to the respondent-plaintiff. A person can grant license if he is in ownership of the property and has given the permission to the licensee to use the area till the license is revoked, in essence, permissive possession. As noticed above, the killa Nos.7, 8 and 9 are not in ownership of the plaintiff whereas appellant-counter claimant is co-ownership of the same. Killa No.9 is of third party, 8/1 is also not under ownership of the plaintiff. In my view, the

aforementioned findings were not required to be passed as it is totally tantamounts to misreading and misconstruing of revenue record i.e. documentary evidence and thus there is perversity.

For the foregoing reasons, I fully agree with the contention of Mr. Markan, Advocate and accordingly expunge the aforementioned extract observations.

Appeal stands disposed of in aforementioned terms while upholding of the findings rendered by the lower appellate Court.

17.08.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No