

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

**Regular Second Appeal No. 2116 of 2012 (O&M)
Date of Decision: May 09, 2016.**

Hari Ram

.....APPELLANT(s).

VERSUS

Dharam Pal

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant (s).

SURINDER GUPTA, J.

CM-8052-C-2013

This is application to place on record document Annexure A-1.

2. The application is allowed and document Annexure A-1 is taken on record subject to all just exceptions.

RSA-2116-2012

3. The dispute in this case pertains to the street on the western side of the land of respondent-plaintiff Dharam Pal. The plaintiff has claimed that this street is only source for ingress and egress to his property and the appellant-defendant has no concern with the same but he wants to encroach upon it illegally and forcibly.

4. The appellant-defendant denied the existence of street on the western side of property of plaintiff.

5. Learned trial Court on the basis of evidence and admission of appellant-defendant in the cross-examination, held that 15 feet wide street on

the western side of property of plaintiff exists and the appellant-defendant was restrained from encroaching it. In appeal filed by appellant-defendant Hari Ram, the judgment and decree passed by learned Civil Judge (Junior Division) was affirmed by learned District Judge, Sangrur.

6. In order to prove existence of street, the plaintiff has placed on record site plan (Ex.P1) which shows that on the northern side of his plot, there is house of Pritam Singh and on the southern side, there is plot of Suresh Kumar, while on the back side, there is house of Gurmail Singh. Appellant has not come up with any counter site plan to prove or even suggest that there is any other passage for the plot of respondent-plaintiff. In the sale deed of plot of plaintiff as well as of Suresh Kumar, whose plot is adjoining the plot of plaintiff, a passage of 15 feet has been shown on the western side.

7. Even while appearing as DW1, appellant-defendant has stated that he has no concern with the land of plaintiff Dharam Pal or with the street. In the next breath, he has stated that the street is being used by them. Then he took the liberty to deny the existence of street at the spot.

8. The Courts below found the testimony of PW2 Suresh Kumar and PW3 Gurmail Singh that street in dispute exists at the spot, as unshattered and reliable. The plaintiff also produced on record photographs of the disputed site showing the existence of street.

9. Learned counsel for the appellant has argued that the land was purchased by plaintiff, appellant-defendant and other persons from one Gurmail Singh. In the revenue record, there is no street existing at the spot. The onus was on the plaintiff to prove the existence of street at the spot, but

he has failed to prove the sale deed in his favour. Site plan (Ex.P1) produced by him was prepared in the court complex and not at the spot.

10. The existence of plots of plaintiff and Suresh Kumar at the spot is admitted. The sale deeds of the plots of plaintiff and Suresh Kumar have been placed on record as mark-F and mark-H respectively. Both these sale deeds were executed by Gurmail Singh and in both the sale deeds, on the western side of plot of plaintiff Dharam Pal and Suresh Kumar, existence of street of 15 feet has been mentioned. The sale deeds, though were not exhibited yet production of these sale deeds as a marked document is sufficient, as contents or execution of these sale deeds is not in dispute. Gurmail Singh, who sold the land to plaintiff has stated that out of his land, he had left 15 feet street for the plot of plaintiff and Suresh Kumar, which is a public passage. The statement of this witness is unshattered.

11. On the other hand, the appellant had purchased the share in the land of Gurmail Singh and not a specific portion. The remedy available to him is to seek partition of his share from the revenue authorities. If any mischief has been played against him by Gurmail Singh, his claim lies against Gurmail Singh and not the plaintiff.

12. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

13. No substantial question of law requiring determination arises in this appeal, which has no merits.

14. Dismissed.

(SURINDER GUPTA)
JUDGE

May 09, 2016.
Sachin M.