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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHAN-  
DIGARH**

**RSA-2482-2013 (O&M)  
Date of Decision:21.01.2016**

**RATTAN SINGH**

**...Appellant**

**VERSUS**

**RAI VARINDER @ KAKA**

**...Respondent**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Ms. Navdeep, Advocate  
for the appellant.

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**DARSHAN SINGH J.**

The present appeal has been preferred against the judgment and decree dated 12.02.2013 passed by the learned District Judge, Jalandhar vide which the appeal filed against the judgment and decree dated 10.02.2011 passed by the learned Civil Judge (Junior Division), Phillaur has been dismissed.

2. Appellant-plaintiff Rattan Singh filed a suit for mandatory injunction directing the defendant/respondent to close/remove the iron gage which has been illegally installed at point A to Y, septic tank shown at point Z and N in the site plan attached with the plaint and further directing the defendant to remove the construction measuring 11 x 12 ft., illegally raised

by him, shown in red colour in the site plan in the suit property/passage comprising Khewat No.51, Khatauni No.70, Khasra No.324 (4 - 18), situated in the area of village Ramgarh, Tehsil Phillaur, District Jalandhar.

3. As per the averment in the plaint, the suit property was joint between him and his brother Bakshi Ram. It was orally partitioned. The property shown in green colour in the site plan fell to the share of the plaintiff and the property marked GHIJDBA shown in blue colour in the site plan fell to the share of Bakshi Ram. This oral partition has taken place in the year 1975. Since, then the plaintiff is using the property in dispute shown in green colour as exclusive owner in possession and has planted trees and vegetables. The same is also being used by him for ingress and outgress of tractor trolley. The defendant has illegally and forcibly installed the septic tank and made the drain in the absence of the plaintiff. The plaintiff filed the civil suit titled as 'Rattan Singh Vs. Varinder'. During the pendency of the said suit, the compromise was effected between the parties. The said compromise was reduced into writing in the shape of agreement dated 19.09.2003 executed between the parties. Defendant had agreed that he will remove the gate, gutter and property measuring 16 x 24 will be used as a passage. But instead of doing so, he has raised the construction of a room at the back of the plaintiff without his consent, due to which, the tractor trolley and other instruments could not passed through the passage. Hence this suit.

4. The suit has been contested by the respondent on the grounds inter alia that the suit property was previously owned by grand father of the defendant namely Bakshi Ram who had purchased the same vide three different sale deeds dated 03.08.1971, 12.08.1971 and 12.07.1972 and the

plaintiff has nothing to do with the suit property. He is neither owner nor in possession of the suit property. Defendant also raised certain legal and preliminary objections and pleaded for dismissal of the suit.

5. Plaintiff-appellant also filed the replication.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

“i) *Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP*

ii) *Whether plaintiff has got no locus standi to file this suit? OPD*

iii) *Whether suit is not maintainable in the present form? OPD*

iv) *Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD*

v) *Whether the plaintiff is barred by his own act and conduct from filing this suit? OPD*

vi) *Whether the suit is barred by principles of res-judicata? OPD*

vii) *Whether suit is time barred? OPD*

viii) *Relief.”*

7. On appreciating the evidence, the learned trial Court dismissed the suit filed by the appellant vide impugned judgment and decree dated 10.02.2011. The appeal filed by him was also dismissed by learned District Judge, Jalandhar vide impugned judgement and decree dated 12.02.2013. Hence this Regular Second Appeal.

8. I have heard Ms. Navdeep, Advocate, learned counsel for the appellant and carefully gone through the paper-book.

9. Initiating the arguments, learned counsel for the appellant contended that the suit property was the joint property of the appellant and his brother Bakshi Ram. Oral partition has taken place between them in the year 1975. Since, the date of said oral partition, the plaintiff has become the exclusive owner of portion shown in green colour in the site plan. He has planted trees and vegetables in the land fallen to his share.

10. Learned counsel for the appellant further contended that respondent-defendant has installed the iron gate and also constructed the septic tank in the passage. He also encroached upon the land by raising illegal construction to block the passage.

11. She further contended that earlier also the plaintiff has filed the suit but the compromise had taken place during the pendency of the suit. The said compromise was reduced into in writing and the defendant has undertaken to remove the encroachments from the disputed passage. But later on, instead of removing those encroachments he raised further construction. She further contended that the factum of oral family partition is fully established from the evidence adduced by the plaintiff. She contended that the learned Courts below have wrongly dismissed the suit filed by the plaintiff.

12. I have duly considered the aforesaid contentions.

13. This Regular Second Appeal has been preferred by the plaintiff against the concurrent findings of fact recorded by both the learned Courts below. The scope for interference with the concurrent findings of fact while exercising the jurisdiction under Section 100 of the Code of Civil

Procedure, 1908 is very limited. Such interference is only warranted when the trial Court and/or the First Appellate Court misdirected themselves in appreciating the question of law and placed the onus on the wrong party, that the material or relevant evidence was not considered, which if considered, would have led to an opposite conclusion, that the findings have been arrived at by the learned Courts below by placing reliance on inadmissible evidence and that the judgments passed by the learned Courts below are perverse.

14. In the instant case, the plaintiff has set up the plea that the suit property comprised of khasra No.324 (4 – 18) was the property jointly owned by him and his brother Bakshi Ram. It is further alleged that the oral partition has taken place between them in the year 1975. Since, then they are exclusive owner in possession of their separate shares. It is also alleged that the defendant has made encroachments in the portion which was being used by the appellant-plaintiff as a passage for ingress and outgress from the property which had fallen to his share. Thus, in order to succeed, it was incumbent upon the plaintiff-appellant to establish the oral partition between him and his brother-Bakshi Ram and that the property/portion in dispute was being used as a passage.

15. Admittedly, there is no documentary evidence to prove the family partition which allegedly took place in the year 1975.

16. On appreciating the evidence available on record, the learned First Appellate Court observed as under:-

*“After hearing counsel for both the sides and going through the evidence of both the sides, the learned lower court came to the conclusion that the agreement/compromise Ex.PW2/A was procured. The appellant had wrongly mentioned that there was*

*no other way leading to his property, whereas a street from southern side was existing. Similarly, in the Jamabandi Ex.PX, the suit property was joint. So, no case was out in favour of the appellant.*

*Now the version of the appellant and evidence stated above may be considered. The appellant filed the instant, suit in respect of Kh. No.324 (4 – 18) alleging that previously it was joint between him and his brother Bakshi Ram. By virtue of an oral partition, it fell to his share. The said oral partition took place in the year 1975. He had filed a civil Suit against the respondent during pendency of which, a compromise had been effected between the parties in which the respondent had agreed to vacate the passage measuring 16 feet. Copy of the said compromise was produced in evidence as Ex.PW2/A. The perusal of the said compromise shows that no Khasra Number was mentioned in it to link it with the suit property. The Jamabandi Ex.PX shows that Kh. No.324 is still joint between the co-sharers. It has not been partitioned. There is no reference of any passage in the said Khasra number. The appellant failed to produce any cogent evidence to show that a Rasta Measuring 16 feet was left for ingress and outgress to his property.”*

17. The learned trial Court has also returned the findings that the plaintiff has not been able to prove the family partition. The suit property is still joint and every co-sharer has a right to use the same in the husband like manner.

18. The aforesaid concurrent finding of fact recorded by learned Courts below are based on correct appreciation of evidence adduced by the parties.

19. The plaintiff-appellant has also relied upon the agreement/compromise (Ex. PW-2/A) but from the cross-examination of

PW-6 Dev Raj Sandhu scribe of the said agreement is rendered doubtful.

The plaintiff has not reported the oral family partition to the Revenue Authorities. No mutation has been entered to recognize the said family partition. The land in dispute is still shown as joint in the revenue record and no passage has been shown to be in existence in the suit property in the revenue record as claimed by the appellant-plaintiff.

20. Thus, I do not find any perversity or illegality in the concurrent findings of fact recorded by the learned Courts below. Consequently, there is no scope to interfere with the findings recorded by the learned Courts below while exercising the limited jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

21. Resultantly, no question of law, much less, the substantial question of law arises in the present appeal. Hence, the present appeal being devoid of merits is hereby dismissed in limine. No order as to costs.

**(DARSHAN SINGH)**  
**JUDGE**

**January 21, 2016**  
rajneesh