

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

R.S.A.No.4538 of 2013 (O&M)
Date of Decision: March 15, 2016

Waryam Singh & others

...Appellants

Versus

Karam Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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: Mr.Pritam Saini, Advocate,
for the appellants.**

**Mr.Aayush Gupta, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

The appellant-defendants are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit for permanent injunction at the instance of the respondent-plaintiffs, has been decreed.

Mr.Pritam Singh, learned counsel appearing on behalf of the appellant-defendants submits that the respondent-plaintiffs are not the exclusive owners, rather the land mentioned is part of Khewat No.88. They have no legal right in the rasta of the appellant-defendants to reach their poultry farm as they have a private and separate rasta for the same. The site plan submitted by the respondent-plaintiffs is not correct and is against the existing state of affairs at the spot. The appellant-defendants are in possession of Khasra No.24 and they have left the rasta for their own use

from their own share and as such the respondent-plaintiffs have no right, title or interest in the said rasta. The rasta has never been used by the respondent-plaintiffs, rather the same is being used by the appellant-defendants and this aspect has been proved through the documentary evidence. The trial Court declined the relief, however, the Lower Appellate Court has misread the evidence, i.e., jamabandi Ex.P5, khasra girdawaries Ex.P6 and Ex.P7, site plan Ex.P8, sale deed Ex.P9 and aks-shijra Ex.P10, whereas power of attorney Ex.D1, site plan Ex.D3, Asmay Malkhan Ex.D4, jamabandi for the year 2000-01 Ex.D5 and khasra girdawari Ex.D6 show otherwise, therefore, there is illegality and perversity in the impugned findings and, thus, urges this Court to formulate the substantial question of law as culled out in the grounds of appeal.

Mr.Aayush Gupta, learned counsel appearing on behalf of the respondent-plaintiffs submits that the respondent-plaintiffs are owners in possession of land measuring 32 kanals comprised in Khewat No.88, Khatoni No.273, Rect.No.47, Khasra Nos. 6(8-0), 15(8-0), 16 (8-0) and 25 (8-0), situated in village Sirsala, Tehsil Thanesar, District Kurukshetra. On the western side of Khasra No.25, there is Khasra No.24, which falls on the kacha rasta, which is in existence from the very beginning and that rasta is fully shown in the accompanying site plan as well as aks-shijra Ex.P10. The Lower Appellate Court relied upon Ex.P10, whereas the appellant-defendants did not show that the respondent-plaintiffs had an alternative rasta to approach their poultry farm and the Lower Appellate Court has rightly enjoined the appellant-defendants by restraining them from interfering in the right of the respondent-plaintiffs to use the passage comprised in Khasra No.24 as shown in letters `ABCD' in the site plan.

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

It is a matter of record that the Khewat is joint, but the fact remains that aks-shijra Ex.P10 shows that there is a rasta adjacent to Khasra No.24. Unless and until both the parties seek partition of the joint khewat, other co-sharers cannot interfere in the use of the passage/rasta in the land which is joint khata. The trial Court dismissed the suit on the ground that no injunction can be granted against the co-sharers unless and until the suit land is partitioned. Since both the parties are co-sharers of the joint khewat and unless and until the same is partition, they should not interfere in each other's possession, much cause no hindrance in the use of the rasta.

The injunction granted by the Lower Appellate Court shall remain in operation till the respondent-plaintiffs seek the partition of the property by moving an appropriate application within one month from the date of receipt of the certified copy of this order and injunction shall remain in force till the adjudication of the application for partition and in case it is found that the respondent-plaintiffs are unnecessarily delaying the matter, liberty is granted to the appellant-defendants to move an appropriate application in this regard. The competent Court is directed to decide the application for partition, if moved, as expeditiously as possible, preferably within a period of eight months thereafter.

The findings returned by the Lower Appellate Court are affirmed. The appeal stands disposed of with the aforementioned observations.

March 15 , 2016
ramesh

(AMIT RAWAL)
JUDGE