

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

RSA No.2329 of 2016 (O&M)

Date of Decision: 16.05.2016

Santokh Singh through LR and anotherAppellants

Vs.

Amrik Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Manish Prabhaker, Advocate
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
- ...

Amol Rattan Singh, J (Oral)

1. This is the second appeal of the defendants after the suit of the plaintiffs, seeking permanent injunction against the defendants from occupying, encroaching, blocking and obstructing an approved/sanctioned passage and further seeking a mandatory injunction directing the defendants to demolish illegal construction over the said passage was decreed in favour of the plaintiffs by the learned Additional Civil Judge (Senior Division), Ajnala, and the appeal filed against that judgment and decree was dismissed by the learned Additional District Judge, Amritsar.

2. Briefly, the facts of the case, as taken from the judgment of the learned lower appellate Court, are that as per the respondents-plaintiffs (hereinafter referred to as the plaintiffs), they are owners in possession of agricultural land and that the aforesaid passage measuring 7 kanals-9

marlas, is leading to and touching their land since the consolidation of holdings in the village, in the year 1962-63 and that the agricultural land of the defendants also touches the aforesaid passage towards its middle. Thus, it was contended that taking undue advantage of the fact that their land was adjoining the passage, the defendants blocked and obstructed the same by constructing a verandah, thereby blocking the passage.

3. Upon notice issued to them, the defendants filed their written statement taking the usual preliminary objections and, other than that, on merits stating that previously also there was litigation between the parties which was decided on 2.8.2010 and that 'the present suit' was merely a counter blast to the previously decided suit. Existence of the passage was admitted but it was contended that the defendants have not encroached upon or blocked any part of the same.

4. A replication having been filed by the plaintiffs, the following issues were framed by the learned Civil Judge:-

- “1. Whether plaintiffs are entitled for the suit of permanent injunction, as prayed for? OPP
2. Whether plaintiffs are entitled for the relief of mandatory injunction by directing the defendants to remove the obstruction by demolishing the illegal construction of verandah over the passage, as prayed for? OPP
3. Whether plaintiffs have no cause of action and locus standi to file the suit? OPD
4. Whether suit for mandatory injunction is not maintainable? OPD

5. Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
6. Whether the present suit is mere a counter blast to the previous suit, which was decided on 2.8.2010? OPD
7. Relief.”

5. On appraisal of the evidence, the learned Courts below came to the conclusion that there was, in fact, an encroachment over the passage as can be discerned from the site plan (Ex.P3) and, in fact, there was a compromise between the parties (Annexure P-1), to which one of the defendants, i.e. defendant No.1, Santokh Singh (now represented by his legal representatives as appellant No.1), while facing cross-examination, had admitted to the said compromise and his signatures thereupon.

It was further found that a perusal of the compromise deed showed that, in fact, Santokh Singh had got a verandah constructed over the passage and had agreed to demolish the same.

Even DW2, in his cross-examination, had admitted that a verandah was constructed by the defendants 3-4 years ago and, therefore, appraising the said evidence, including the site plan relied upon by the defendants (Ex.D1), the learned lower Courts eventually came to the conclusion that there was, indeed, an encroachment by the defendants (present appellants) and the suit of the plaintiffs was, accordingly, decreed in their favour, with the first appeal also dismissed.

6. Learned counsel for the appellants submits that the second part of paragraph 2 of the compromise deed signed between the parties, states that incase Santokh Singh (appellant) encroaches upon the passage in

question, he would be liable to get the same removed.

He, therefore, submits that it is obvious that the appellant had not actually encroached upon the same and even the compromise arrived at was that the passage should not be blocked, and in case it is blocked, appellant Santokh Singh would remove the construction.

7. I find absolutely no merit in the aforesaid contention, in view of the fact that it is, admittedly, a public passage which was paved by the Gram Panchayat. The first part of the compromise reached very clearly shows that Santokh Singh has constructed over the passage.

The following lines may be quoted from the compromise-agreement (Ex.P1), a copy of which has been annexed with this appeal:-

“This common passage touches the land of Santokh Singh. Santokh Singh has constructed a verandah on this land and in this regard the party No.2 Amrik Singh has filed a suit for clearing the passage.”

(Emphasis applied by this Court)

Even the vernacular version (in Gurumukhi) of the instrument of compromise, states that the appellant has constructed over the said passage. Hence, the subsequent part of the compromise deed, saying that in case he has constructed and has blocked the passage, he would be liable to remove the construction, is inconsequential.

Both the Courts below have come to the aforesaid finding on the basis of the aforesaid agreement, taking it to be an admission of the appellant that construction has been made over a public passage, which passage was carved out during consolidation and was even paved with bricks by the Gram Panchayat.

Consequently, the Courts below having arrived at a finding of

fact based upon appraisal of the evidence before them, which is not seen to be perverse in any manner, I find no merit in the present appeal. It is, hence, dismissed *in limine*, with no order as to costs.

9. At this stage, learned counsel further submits that no demarcation was got done by the learned Courts below and as such it is not clear as to what is the width of the passage and the extent of construction by the appellant, upon the passage.

Even if that is so, the executing Court would take care in any executing proceedings filed, that nothing more than what is constructed upon the 'Rasta', as shown in the revenue record, (including consolidation proceedings), is got removed and no part of the house/structure of the appellant, as falls within his own personal area, proved by revenue record, is demolished.

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10. In view of the fact that the appeal has been dismissed in limine as above, the question of condonation of the delay of 24 days in filing the appeal is rendered academic and is not gone into.

May 16 , 2016
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(AMOL RATTAN SINGH)
JUDGE