

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

RSA-1240-2015 (O&M)

Date of decision: 12.01.2016

Dharampal (deceased) through LRs

...Appellant(s)

Versus

Nanhar (deceased) through LRs

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Praveen Hans, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 16.11.2011, passed by the learned Civil Judge (Junior Division), Charkhi Dadri (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been dismissed; and judgment and decree dated 27.08.2014, passed by the learned Additional District Judge, Bhiwani (for short, the first Appellate Court), whereby, the appeal preferred by the plaintiff-appellant against the impugned judgment and decree dated 16.03.2011, of the trial Court, has also been dismissed.

The plaintiff filed suit for permanent injunction, restraining the defendants from interfering in his use of passage,

shown as EF GD, which is the only passage leading to his house , i.e. ABCD, as reflected in the site plan attached to the plaint. The trial Court, vide impugned judgment and decree dated 16.03.2011, dismissed the suit after returning issue-wise findings to the effect that the suit is barred by law to be instituted in a civil Court.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal vide impugned judgment and order dated 27.08.2014.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant has submitted that the dispute is between private persons and not between a private person and the Gram Panchayat, thus, the present suit is not maintainable before the Civil Court. The path in question is the only path for ingress and egress of the house of the plaintiff/appellant

I have heard learned counsel for the appellant and gone through the case file.

In the present case, the only point to be determined by this Court is that whether the path in question is the only path for ingress and egress available to the appellants. It has come on record that the appellants and respondent Nos.2 and 3 entered into

an agreement by placing on record the compromise Ex.C1. Their statements were also recorded. A perusal of the contents of Ex.C1 reveal that the parties have compromised the matter to the effect that the street in issue shall be used as a common street by all the parties. Furthermore, as per the site plan produced on file by the plaintiff-appellants, Ex.P1, prepared by the Local Commissioner, PW2 as Ex.P3 and Ex.DW3/A, it is evident that there is another path also to the house of the plaintiff/appellants. It has also been stated by PW2, Surender Pal Singh that the main gate of the house of the plaintiffs is on the Eastern side as shown in Ex.P3. This version is also in consonance with the site plan furnished on record by the defendants as Ex.DW3/A. The appellant would not become entitled for the relief sought by the mere installation of gate by them.

In ***Kashmir Singh Vs. Harnam Singh, 2008(2) R.C.R. (Civil) 688***, the Hon'ble Apex Court has held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts

by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.....”

The present case relates to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

12.01.2016
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(JITENDRA CHAUHAN)
JUDGE