

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

(1) RSA-1421 of 2015 (O&M)
Date of decision: 27.01.2016

Bhag Singh (since deceased) thr. LR and another
...Appellants

Versus

Sukhdev Singh and others
...Respondents

(2) RSA-2272 of 2015 (O&M)
Date of decision: 27.01.2016

Surjit Singh and another
...Appellants

Versus

Sukhdev Singh and others
...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Premjit Kalia, Advocate for the appellants.

Jitendra Chauhan, J. (Oral)

CM-4017-C-2015 in RSA-1421-2015

Keeping in view the averments made in the application, the same is allowed. The delay of 12 days in re-filing the present appeal is hereby condoned subject to all just

exceptions.

CM-5921-C-2015 in RSA-2272-2015

Keeping in view the averments made in the application, the same is allowed. The delay of 24 days in re-filing the present appeal is hereby condoned subject to all just exceptions.

Main Case

The plaintiffs/appellants had filed a suit for permanent injunction. The trial Court vide judgment and decree dated 18.02.2013, partly decreed the suit.

2. Aggrieved against the findings of trial Court, the defendant/respondent-Sukhdev Singh filed an appeal which was allowed by the learned Appellate Court, vide judgment and decree dated 15.10.2014, after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal is at the behest of the plaintiffs/appellants. However, the appeal filed by Surjit Singh and another was dismissed with costs.

3. The above noted two appeals are being disposed of by this single judgment, having arisen out of the common judgment. However, the facts are being derived from RSA No.

1421 of 2015.

4. It is contended by learned counsel for the appellants that the learned Appellate Court has wrongly returned the findings recorded by the trial Court with respect to khasra No. 32//5/2, vide which the suit of the appellants was partly decreed. As per the revenue records, the appellants are shown to be the owners in possession over the khasra No. 32//5/2 and 32//6 and the respondents have been illegally trying to carve out a passage through the land of the appellants.

5. I have heard the rival contentions of learned counsel for the appellant and have gone through the case file carefully.

6. A bare perusal of Ex.D2 Aksh Shajra reveals that the passage in dispute exists on the spot. The passage bearing khasra No. 143 leads from the eastern side towards the western side after touching suit land bearing khasra No. 32//5/2 on its western side and further after touching the khasra No. 32/6 on its northern side. It further diverts into two opposite directions, one towards the western side and another towards the eastern side of the khasra No. 32//6. No evidence has been put forth by the plaintiffs/appellants to rebut Ex.D2, the Aksh Shajra. Furthermore, the appellant Surjit Singh, while appearing in the

witness box had admitted that the plaintiffs/appellants will not allow the gram panchayat to carve out the passage even if their land would be intact on the spot. He had stated that he did not know about the khasra numbers of the land owned by him. He could not even tell the exact area of the suit land. He had also admitted that the present suit had been filed in respect of non conducting of demarcation, which clearly proves the conduct of the appellants(s) to obstruct the process of conducting demarcation of the public passage which had been meant for betterment of the villagers by the gram panchayat. Accordingly, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. In **Kashmir Singh Vs. Harnam Singh and another**, 2008(2) RCR (Civil) 688, it has been 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.

When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

7. 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. Accordingly, both the appeals are dismissed.

27.01.2016

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(JITENDRA CHAUHAN)
JUDGE