

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

**R.S.A No.61 of 2013(O&M)
Date of decision : 11.05.2016**

Karnail Singh

..... Appellant

Versus

Sukhdev Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.S.Dhaliwal, Advocate
for the appellant.

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

DARSHAN SINGH,J

CM No. 15612-C of 2015

This application has been filed for placing on record the report of Local Commissioner (Annexure A-1).

Heard.

For the reasons mentioned in the application, the present application stands allowed and the report of the Local Commissioner (Annexure A-1) is taken on record subject to just objections of the opposite party.

CM No. 648-C of 2016

This application has been filed for placing on record the site plan which is part of report of Local Commissioner (Annexure A-2).

Heard.

For the reasons mentioned in the application, the present application stands allowed and the report of the Local Commissioner (Annexure A-2) is taken on record subject to just objections of the opposite party.

R.S.A No. 1515 of 2014(O&M)

The present appeal has been preferred against the judgment and decree dated 03.09.2012 passed by learned Additional District Judge, Barnala, vide which the appeal filed by the appellant-plaintiff against the judgment and decree dated 26.11.2011 passed by the learned Additional Civil Judge (Senior Division), Barnala, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Appellant-plaintiff Karnail Singh has filed the suit for permanent injunction restraining the defendant-respondent Sukhdev Singh from dismantling and taking the forcible possession of 16 ½ feet wide passage adjoining to the house of the plaintiff bearing no. B-XIV/2815 on the southern side shown in red colour in the site plan attached with the plaint.

4. As per averments in the plaint, the plaintiff-appellant purchased the plot in dispute vide registered sale deed dated 15.09.1993. Since, then he is in owner in possession thereof. There was some mistake in describing the dimensions/boundaries of the plot. There exists a passage on the southern side of the plot/house of the plaintiff, which is 16' wide and is being used by the plaintiff right from the date of the

purchase of the plot. The defendant without any legal right threatened to dismantle/close the passage. Hence, the suit.

5. Defendant-respondent contested the suit on the plea that no passage exists at the spot. The disputed portion bears khasra nos. 155//5/2(04) min, 156//1/2(0-13), 2/2(0-13), 3/2(0-13) measuring 2 kanals 13 marlas. Defendant is owner in possession of this property. The plaintiff has deliberately suppressed the fact that such property bears khasra numbers. The plaintiff had illegally opened the doors of his house towards the disputed property on 06.06.2005 and then filed this suit. On coming to know about this fact, defendant moved an application dated 07.06.2005 to the SHO, Police Station, Kotwali for closure of the said door. Plaintiff has separate passage for his egress and ingress to his house. With these pleas, defendant pleaded for dismissal of the suit.

6. Plaintiff filed replication controverting the pleas raised in the written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether disputed property is passage for use of the plaintiff and plaintiff is entitled to permanent injunction as prayed for?OPP
2. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the plaintiff-appellant for permanent injunction with costs, vide impugned judgment and decree dated 26.11.2011.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff has preferred the appeal, which was also dismissed by the learned First Appellate Court, vide impugned judgment and decree

dated 03.09.2012. Hence this Regular Second Appeal by the appellant-plaintiff.

9. I have heard Mr. P.S.Dhaliwal, Advocate, learned counsel for appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the appellant-plaintiff has purchased the plot vide registered sale deed dated 15.09.1993. There exists a 16 feet wide passage on the southern side of his plot. The plaintiff constructed his house over the said plot and has been using the passage situated on the southern side of his house since the date of the purchase of the plot. The doors of the house of the plaintiffs also opens in the said passage. The existence of the passage is established from the statements of all the witnesses examined by the plaintiff, the site plan and the report of the Local Commissioner. Thus, he contended that once the existence of the passage is established, the plaintiff become entitled for injunction and defendant has no right to dismantle/close the said passage.

11. I have duly considered the aforesaid contentions.

12. It is settled principle of law that in order to secure the relief of injunction, plaintiff has to prove the legal right. So, it was incumbent upon the plaintiff-appellant to establish that 16 feet wide passage exists on the southern side of his house in a lawful manner and plaintiff has legal right to use that passage. No doubt PW-1 Malkiat Singh and PW-2 Mohinder Singh, supports the case of the plaintiff regarding the existence of the passage. The report of the Local Commissioner shows the existence of the passage on the backside of the house of the plaintiff. It is

also reported that some of the neighbours have opened their gates towards the said passage. But, this fact is not disputed that the property in dispute bears the khasra numbers and also falls within the limit of Municipal Council, Barnala. Ex.P1/A is the sale deed in favour of the appellant-plaintiff, wherein totally different dimensions have been mentioned and do not tally with the dimensions mentioned in the plaint. The plaintiff has not taken any step for the rectification of the mistake with respect to the boundaries/dimensions of his plot. The appellant-plaintiff has pleaded that the wrong dimensions were inadvertently mentioned in the sale deed.

13. As already mentioned, mere this fact that some inhabitants of the locality have opened their doors towards the site in dispute and having been passing over the vacant land will not establish the site in dispute to be a passage. The defendant has placed on file the Aks Shajra Ex.D-3, which shows that there does not exist any passage on the southern side of the house of the plaintiff. Rather, this land belongs to the defendant, which is evident from the copy of the jamabandi Ex.D-2 and khasra girdawri entry Ex.D-5. Plaintiff has admitted that he has no concern with khasra nos. 155//5/2(04) min, 156//1/2(0-13), 2/2(0-13), 3/2(0-13). he has categorically admitted that at the time of submitting the site plan to the Municipal Council, he did not mentioned the existence of the street in dispute on the southern side of his house. He has also admitted that two owner of the houses in the locality had already closed their doors, which were opened by them towards the property in dispute. The learned First Appellate Court has observed that on perusal of the

photographs EX.P-1 to Ex.P-12, there is no indication that the site in dispute is a street/passage, rather it appears to be agriculture land. Admittedly, the site in dispute bears the khasra numbers. The plaintiff has admitted that he has no concern with these khasra numbers. The Aks Shajra Ex.D-3 also depicts that no street/passage exist in the disputed khasra numbers. The plaintiff has suppressed the khasra numbers of the suit land in order to claim the equitable relief of injunction by suppression of the material facts. The plaintiff has purchased the plot in dispute from one Dalip Singh. Said Dalip Singh, the vendor of the plaintiff has not been examined to establish the correct boundaries of the suit property.

14. Ex.P-25 is the copy of the site plan submitted by him to the Municipal Council at the time of construction of his house. In the site plan, he has shown three streets. Whereas, it is the positive case of the plaintiff that there are only two streets abutting to his house on the norther and southern side. In this manner, the appellant-plaintiff has failed to establish the legal existence of any passage/street on the southern side of his house. If some owner of houses have illegally opened the doors towards the site in dispute owned by the defendant, that will not convert the said land into the street/passage and will not make the appellant-plaintiff entitled to claim the relief of permanent injunction.

15. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

16. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 11, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**