

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

R.S.A. No.2809 of 2015 (O&M)

Date of decision: 14.01.2016

Atma Singh

...Appellant

Versus

Bhag Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. HNS Gill, Advocate for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 30.10.2014, passed by the learned Additional District Judge (FTC), Ropar, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 23.04.2014, passed by the learned Additional Civil Judge, Sr. Divn., Rupnagar, (for short, the 'trial Court'), has been dismissed.

The appellant-plaintiff filed a suit for permanent injunction as well as for mandatory injunction against the respondent-defendant. The learned trial Court vide judgment and decree dated 23.04.2014 dismissed the suit after returning the issue-

wise findings on the issue Nos.1 to 7.

The appeal filed thereagainst by the plaintiff/appellant was dismissed by the learned first Appellate Court vide judgment and decree dated 30.10.2014. The first Appellate Court affirmed all the findings recorded by the learned trial Court after discussing and evaluating the oral as well as documentary evidence on record.

Hence, this appeal at the behest of the plaintiff/appellant.

The learned counsel for the appellant contends that the learned Courts below have totally ignored the fact that without the consent of the co-sharer no drain could pass through the land. The appellant has 14/61 share out of the suit land i.e.14 Biswas, in Khewat No.68/65, Khatoni No.97, Khasra No.459, total 3 Bighas, 1 Biswas, as per Jamabandi for the year 2002-03 (Ex.P1). In addition to this, an undertaking was given by the earlier Sarpanch that no drain would pass from the suit land without the consent of the appellant.

After hearing the learned counsel for the appellant and carefully gone through the entire record on file.

There is no dispute that as per the Jamabandi, Ex.P1, the plaintiff is shown to be the co-sharer in the suit land to the extent of 14/61 shares in the entire khata, but neither the site plan nor map sajra aksh has been placed on the file. There is no demarcation report from the revenue officials to prove that in fact the drain was constructed in

the land mentioned in the plaint, belonging to the plaintiff. The plaintiff has failed to prove that the drain was constructed by the Gram Panchayat in his land.

In **Kashmir Singh Vs. Harnam Singh and another**, 2008 (2) RCR (Civil) 688, it has been held that 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.

On consideration, this Court finds that the contentions have no merit as these only relate to the appreciation of evidence. No evidence has been 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.

14.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE