

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH  
123**

RSA No. 2854 of 2015 &  
C.M. No. 6994-C of 2015

Date of Decision: 01.03.2016

Hari Ram and others

**.....APPELLANTS**

**VERSUS**

Banta and others

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

**PRESENT:** Mr. Vinod Bhardwaj, Advocate,  
for the appellants.

**AUGUSTINE GEORGE MASIH, J (ORAL)**

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Kaithal dated 10.01.2013, whereby the suit for mandatory injunction and permanent injunction as a consequential relief restraining the respondents-defendants from interfering in the public street measuring 3 Karams on southern side of the plot, which was purchased by the appellants-plaintiffs as per the sale deed dated 06.05.1987 was partly decreed to the extent that respondent-defendant No. 12 was held to have encroached upon the said path. However, on appeal preferred by both the parties, the appeal preferred by the respondent-defendant No. 12 has been accepted and apart from dismissing the appeal of the appellants-plaintiffs, the suit has been dismissed in toto, which order has been challenged in the present appeal.

2. It is the contention of the learned counsel for the appellants that the Courts below have not properly appreciated the pleadings and the

evidence brought on record by the appellants-plaintiffs. It is apparent from the sale deed dated 06.05.1987 Ex. P3 whereby a plot was purchased and on the southern side of the plot was a *rasta* 3 Karams wide which finds mentioned in the sale deed. Dhoop Singh, Kanungo, who was appointed to demarcate the passage in question existing in killa No. 14, in his report has clearly mentioned that there exists a path and has submitted a site plan as well, which has been accepted by the trial Court but rejected by the Appellate Court by holding that he was not entitled to and supposed to demarcate killa No. 15 as well. An assertion has also been made that he has not visited the spot and has prepared the report only on the instructions of the appellants-plaintiffs. These findings are not based on record and, therefore, the findings, as recorded by the trial Court regarding encroachment by respondent-defendant No. 12, cannot be faulted with and in any case, the encroachment on the path by respondent-defendant No. 12-Nafe Singh has been proved and, therefore, at least the decree, as has been passed by the trial Court, deserves to be upheld.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments but do not find myself in agreement with the appellants-plaintiffs.

4. Even if the assertion of the counsel for the appellants that it was a public path on the southern side of the plot of the appellants-plaintiffs, which was 3 Karams wide, is said to be correct, it was required to be reflected in the revenue records but till date, in the revenue records, there is no reflection with regard to the *rasta* being there. No document has been placed on record to substantiate this contention that there is indeed a *rasta*

existing on the southern side of the plot, which is 3 Karams wide. The learned Lower Appellate Court has rightly discarded the report of Dhoop Singh as he has not gone to the spot and prepared the report Ex. P4 showing the alleged passage not only in killa No. 14 but killa No. 15 as well merely on the instructions of the appellants-plaintiffs. The finding of encroachment by respondent-defendant No. 12-Nafe Singh on the rasta was based on the report of Dhoop Singh which has rightly been discarded by the Courts below. The findings, as recorded by the learned Lower Appellate Court, cannot be faulted with qua the respondents-defendants that there is no encroachment as there is no evidence on record that this path in question is a public path or a private path of the appellant-plaintiff. The judgments and decree, as passed by the Courts below, are based upon proper appreciation of the pleadings and evidence brought on record as also in law and, therefore, do not call for any interference.

5. No other point has been argued by the counsel for the appellant-plaintiff.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

7. There is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the appeal, the same stands dismissed.

**C.M. No. 6994-C of 2015**

In view of the dismissal of the main appeal, no separate orders

are required to be passed in this application for stay and, therefore, the same stands dismissed.

**March 01 2016**  
*pj*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**