

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

**R.S.A No.3378 of 2015 (O&M)
Date of decision :24.02.2016**

Jagdish

..... Appellant

Versus

Rishala Through his LRs Chemli and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Parminster Singh, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 23.02.2015 passed by the learned Additional District Judge, Karnal, vide which the appeal preferred against the judgment and decree dated 11.06.2012, passed by the learned Civil Judge (Jr. Division), Karnal, has been dismissed.

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

3. As per the case of the appellant-plaintiff, he is co-sharer in possession of the agriculture land detailed and described in the plaint. The suit property includes Khasra No.14/9/2(0-19). There is a passage shown by letters ABCD in the site plan as well as in the Akshijra, which

is being used by him for ingress and egress. The width of the said passage is 11 feet. The said passage is in existence since the consolidation, which took place 50 years back. The defendants intend to demolish the said passage. Hence the suit for seeking the decree for permanent injunction.

4. The respondents-defendants contested the suit that there is no passage in rect. no.14, killa no.9/2(0-19). The defendants are owner in possession of the land detailed in para no.2 of the plaint. The plaintiff wants to obtain the injunction by preparing the false Akshizra. It was further pleaded that the land measuring 0K-19M comprised in rect. no. 14, Khasra no. 92 is owned by the defendants and they are in actual and physical possession of the same.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court on 05.01.2011:-

1. Whether the plaintiff is entitled to seek the relief of permanent injunction as prayed for?OPP
2. Whether the plaintiff is not legally maintainable?OPD
3. Whether the plaintiff had got no locus standi to file the present suit?OPD
4. Whether the plaintiff has concealed the true and material facts from the court?OPD
5. Whether the suit has been filed in collusion with some other person and to cause loss to the defendant?OPD
6. Whether no cause of action has arisen in favour of the plaintiff? OPD
7. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 11.06.2012.

7. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal and the same was also dismissed by the learned Additional District Judge, Karnal vide impugned judgment and decree dated 23.02.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Parminder Singh, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the existence of the passage in dispute is fully established from the report of the local commission. He further contended that the passage in dispute is the only passage available to the appellant-plaintiff for ingress and egress. He has easement of necessity qua the passage in dispute. So, the defendants have no right to block or damage the passage in dispute. He relied upon case **Babli Krishna Vaigankar & Anr. Vs. Laxman Sagun Vaigankar & Anr. 2007(5) R.C.R (Civil) 65**. Thus, he contended that the learned Courts below have not properly appreciated the evidence on record.

10. I have duly considered the aforesaid contentions.

11. The appellant-plaintiff has alleged that there exists a passage shown with letters mark ABCD in the site plan attached with the plaint in rect. no. 14 killa no. 9/2. It is alleged that the width of this passage is 11 feet. Learned counsel for the appellant has raised the plea of easement of necessity, but he has fairly admitted that no such plea has been raised by the appellant-plaintiff in the plaint. In order to claim the easement of necessity, the foundation has to be laid in the pleadings. It is further the

settled principle of law that the arguments raised beyond pleadings deserves outright rejection. Thus, in the absence of pleadings, the appellant-plaintiff cannot claim the right of easement of necessity qua the alleged passage.

12. In order to secure the relief of injunction, the appellant-plaintiff was required to establish his legal right to use the site in dispute as a passage. But, the plaintiff-appellant has failed in this regard. No doubt, the local commission has reported that there exists a passage of 10 feet in rect. no.14, killa no.9/2. But, mere user of somebody else's land will not make it a public passage and no one can have any legal right to claim injunction.

13. No passage has been shown in rect. 14, killa no.9/2, in the revenue record. Learned First Appellate Court has categorically mentioned that in Akshizra Ex.P-1, no passage has been shown in rect. no. 14, killa no.9/2 as alleged by the plaintiff. The jamabandi for the year 2004-2005 Ex.P-2 shows the defendant-Rasala to be in exclusive possession of the aforesaid land. The khasra girdawri Ex.D-1 and Ex.D-3 also depicts the same position. Thus, the alleged passage has not been shown in the revenue record. Consequently, the plaintiff has not been able to establish that any passage was left in rect. No.14, killa no.9/2 during consolidation. So, the appellant-plaintiff has no legal right to use the land owned by the defendant as a passage. Therefore, he is not entitled for any injunction as prayed for.

14. Thus, the well reasoned findings recorded by the learned Courts below do not warrant any interference by this Court in the Regular

Second Appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 24, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**