

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

**RSA-5127-2016 (O&M)
Date of decision : 05.10.2016**

Diwakar Bhardwaj and others

... Appellants

Versus

Municipal Council (now Municipal Corporation) and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jai Vir Yadav, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-13608-C-2016

The application is for preponement of the date of hearing.

For the reasons stated in the application, application is allowed.

The hearing of the appeal is preponed and taken on board.

RSA-5127-2016 (O&M)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit seeking the following relief:-

“To pass a decree for permanent injunction in favour of plaintiffs and against defendants restraining defendant No.1 from carving out plot bearing No.39 or any other plot over any part of passage shown in red colour in the annexed site plan and marked by letters EFGH; restraining defendant No.1 from delivering possession of the plot to defendant No.2, restraining defendants from raising construction over the passage and preventing the plaintiffs from using and utilizing the passage

shown in red colour in the annexed site plan for ingress and egress to their property shown in green colour in the annexed site plan and from creating any type of hindrance or obstructions over the aforesaid passage. Costs of the suit may kindly be granted to the plaintiff”.

has been dismissed by both the Courts below.

Mr. Jai Vir Yadav, learned counsel appearing on behalf of the appellants-plaintiffs submits that both the Courts below have abdicated in not appreciating the site plan in its correct perspective. In fact, the suit aforementioned was filed seeking restraint order against the defendant Nos.1 & 2, whereby the defendant No.2 had purchased the plot in open auction. In fact the appellants-plaintiffs had been using the passage since 1984, when the property, in dispute, was purchased on 27.04.1984. The *rasta* had been in existence from time immemorial and therefore, the possessive rights, much less, easementary right could not have been taken away. The Municipal Corporation did not invite any objections while holding the auction, much less, by obstructing the passage. The Courts below have committed illegality and perversity in believing the version of the defendant(s) that there was/is a *rasta* towards the southern side of the property owned by the appellants-plaintiffs. The finding is wholly erroneous. In fact, no documentary or oral evidence had been led by the defendant(s) to prove the existence of the *rasta* towards the southern side of the land measuring 275 square yards owned and possessed by the appellants-plaintiffs. There is a gross misreading of the statement of DW-4, who unequivocally admitted that he could tell the *rasta* towards the southern side. The Courts have also ignored in not relying upon the report of the Local Commissioner (PW-1), who proved the report (Ex.P-8) and site

plan (Ex.P-9) reflecting the existence of the *rasta*, in fact, the report has been proved to the hilt as no objection to the same was filed, thus, there is a gross misreading of the evidence on record in holding that the land was situated in the western side of the land purchased by the appellants-plaintiffs had been sold for construction of Chopal, Hotel and Banquet, thus, urges this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellants-plaintiffs and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Jai Vir Yadav, for, the sale deed of 1984 did not reflect any existence of *rasta*, for which, injunction has been sought. The simpliciter suit for injunction was not maintainable, as during the course of the arguments, it has been brought to the notice of this Court that the representation submitted by the plaintiffs to the Municipal Corporation was rejected. At least, the plaintiffs should have challenged the same by seeking declaration, much less, challenged the auction. Once, the property belonged to the Municipal Corporation had been sold, the appellants-plaintiffs cannot have any stake or claim in the easementary right. It is not the case that the appellants-plaintiffs would be rendered as remediless, much less, there is no passage. During all the period when the suit was filed in 2004 till date, there was no interim stay. Meaning thereby that the plaintiffs had been entering the premises through the passage as spelled out by the defendant(s). I am of the opinion that the appellants-plaintiffs miserably failed to discharge the onus of easementary rights. No evidence of using the passage since time immemorial has been placed on record. The report of the Local Commissioner cannot be believed as the ownership of the land is of Municipal Corporation. It is a common practice that a land

belonging to the Government or various local bodies/authorities lying unused/vacant is being used by the inhabitants of the area, but that does not entail them right of easement. The appellants-plaintiffs while in buying the property in the year 1984, should have been careful, as the dimension given therein did not mention about the passage alleged to have been used since time immemorial.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination and accordingly, the appeal is dismissed.

05.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No