

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

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

Date of decision : 11.05.2016

Karnail Singh and another

..... Appellants

Versus

Sukhdev Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

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. 3603-C of 2014

This application has been filed for condonation of delay of 4 days in re-filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the present application stands allowed and the delay of 4 days in re-filing the present appeal is hereby condoned.

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

The present appeal has been preferred by appellants-defendants no. 4 and 5 against the judgment and decree dated 10.09.2013 passed by learned District Judge, Barnala, vide which the appeal filed by them 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. The plaintiff-respondent Sukhdev Singh has filed the suit for mandatory injunction directing the defendants to close doors of their houses, which they have opened towards the land comprised of khewat no. 860/1368, khasra no. 155//5/2 (0-4), 156//1/2 (0-33), 2/2(0-13), 3/2 (0-13), measuring 2 kanals 3 marlas, detailed and described in the head note of the plaint.

4. As per the case of the plaintiff-respondent, he is owner in possession of the aforesaid land, which is situated within the limits of Municipal Council, Barnala. The defendants have no concern with the property in dispute. In order to convert the suit land into passage, they had opened the doors of their houses towards the suit land only to create defence in the suit filed by them through Karnail Singh. Hence, the suit.

5. Appellants-defendants contested the suit on the grounds *inter alia* that the plaintiff has no concern with the khasra nos. 155//5/2 (0-4), 156//1/2 (0-33), 2/2(0-13), 3/2 (0-13) and is neither owner in possession thereof. In fact, there is 16 ½ feet wide street on the southern side of their houses. After the purchase of the plots, they had constructed their houses and are using the passage 16 ½ feet wide situated on the southern side of their houses. The plaintiff intended to encroach upon the said passage without any legal right. A Local Commissioner was also appointed by the Court in civil suit no.149 of 06.06.2005 titled as 'Karnail

Singh Vs. Sukhdev Singh'. It was further pleaded that there are doors and plots are abutting to the said passage. The plaintiff has no right, title or concern with the said passage. With these pleas, they pleaded for dismissal of the suit.

6. Plaintiff filed replication to the aforesaid written statement controverting the pleas raised therein. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 08.05.2006:-

1. Whether the plaintiff is owner of the suit property and entitled to mandatory injunction as prayed for?OPP
2. Whether plaintiff has no locus-standi to file the suit?OPD
3. Whether plaintiff is estopped by his own act and conduct from filing the suit?OPD
4. Whether the suit in the form of mandatory injunction is not maintainable?OPD
5. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit plaintiff-respondent Sukhdev Singh for mandatory injunction with costs, vide impugned judgment and decree dated 26.11.2011 and defendants were directed to close their doors/windows within three months, in case they failed to do so then this preliminary decree will automatically become final decree.

8. Aggrieved with the aforesaid judgment and decree, appellant-defendants nos. 4 and 5 preferred the appeal, which was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 10.09.2013. Hence this Regular Second Appeal by the

appellants-defendants no. 4 and 5.

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

10. Initiating the arguments, learned counsel for the appellants contended that there exists 16 ½ feet wide passage on the southern side of the houses of the appellants-defendants, which they are using since the date of the purchase of the plots. The doors of their houses also opens in the said passage. The plaintiff-respondent has no concern with the said land, which in-fact is a passage and being used by the appellants since long. The existence of the passage is fully established from the evidence adduced by the appellants and even a Local Commissioner was appointed in civil suit no. 149 of 06.06.2005, who has reported about the existence of this passage. Thus, he contended that the plaintiff has no right to claim any mandatory injunction for closing the doors of the houses of the appellants which opens in the passage in question.

11. I have duly considered the aforesaid contentions.

12. This fact is not disputed that the property in dispute bears the khasra numbers. In the written statement, the appellants have pleaded that plaintiff has no concern with the khasra nos. 155//5/2 (0-4), 156//1/2 (0-33), 2/2(0-13), 3/2 (0-13). It was further categorically pleaded that he is neither owner nor in possession thereof. So, impliedly this fact is not disputed that the site in dispute is part of the aforesaid khasra numbers. Copy of the jamabandi Ex.P-2 for the year 2003-04 shows that the plaintiff is owner in possession of the aforesaid khasra numbers. Ex.P-3 is the Aks Shajra of the land in dispute, wherein no passage or *Pahi* has

been shown as alleged by the appellants-defendants. Thus, the revenue record brought on record clearly negates the legal existence of any passage/street in the site in dispute situated on the southern side of the houses of the appellants-defendants. The appellants have not led any documentary evidence to rebut the aforesaid revenue record. Mere oral evidence adduced by the appellants cannot rebut the aforesaid documentary evidence and cannot establish the legal existence of the passage on the southern side of the houses of the defendants.

13. Thus, as the plaintiff-respondent is owner in possession of the land comprised of khasra nos.155//5/2 (0-4), 156//1/2 (0-13), 2/2(0-13), 3/2 (0-13) situated on the southern side of the houses of the appellant-defendants, so they had no right to open the doors/windows towards the land of the plaintiff and plaintiff-respondent is certainly entitled for mandatory injunction for issuance of mandate to the appellants-defendants to close their doors/windows opened towards the land in dispute.

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

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

16. 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