

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

RSA-4390 of 2015 (O&M)

Date of decision: 15.01.2016

Kiran Saini

...Appellant

Versus

Ramphal and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Rajinder Goyal, Advocate for the appellant.

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**Jitendra Chauhan, J.**

By way of the present appeal, the plaintiff/appellant has assailed the judgment dated 28.04.2015, passed by Addl. District Judge, Kaithal, upholding the judgment dated 08.02.2013, passed by Civil Judge (Jr. Divn.), Kaithal, whereby the suit for declaration filed by the plaintiff/appellant was dismissed.

It is contended by learned counsel for the appellant that both the Courts below have gravely erred in not considering the fact that in the mutual agreement between predecessor-in-

interest of the plaintiff/appellant, namely, Amar Nath and the defendants, the land in dispute was exchanged by the predecessor-in-interest of the plaintiff and the defendants as killa Nos.6, 7 and 14 of Rectangle No.203 had no passage (rasta) left for ingress and outgress. The said fact was not incorporated in the revenue records and the respondents by taking undue advantage of said fact have included the passage in their agricultural land. However, both the Courts below have failed to consider this aspect of the matter.

Heard.

The Court has perused the entire record. The onus to prove her case was upon the plaintiff/appellant before the Courts below to substantiate the factum of exchange of land for the purpose of providing passage for ingress and outgress to the predecessor-in-interest of the appellant. However, no predecessor-in-interest or any independent witness has been examined by the appellant in order to prove her claim. From para No.4 of the judgment of the trial Court, it spells out that the present appellant had purchased the land during the pendency of litigation. Neither the original plaintiff who had initially filed this suit nor any of her LR has been examined. There being

concurrent findings of fact 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, this Court is of the opinion that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. In **Kashmir Singh** Vs. **Harnam Singh and another**, 2008(2) RCR (Civil) 688, it has been held as under:-

*“17. 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. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”*

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.

Dismissed.

15.01.2016

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(JITENDRA CHAUHAN)  
JUDGE