

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

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Regular Second Appeal No.4704 of 2015 (O&M)
Date of Decision: March 28, 2016

Jagdev Singh and another

...Appellants

Versus

Wariyam Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Siddharth Gupta, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.11329-C of 2015

Prayer in this application is for exemption from filing the true typed copies of judgment dated 30.05.2015 passed by learned Additional District Judge, Bathinda, grounds of appeal dated 07.08.2012 and judgment dated 24.07.2012 passed by learned Civil Judge (Junior Division), Phul.

Application is allowed.

Exemption from filing the aforesaid documents is granted subject to just exceptions.

RSA No.4704 of 2015

Challenge in this appeal is to the judgment and decree dated 30.05.2015 passed by the Additional District Judge (Fast Track Court), Bathinda, whereby the appeal preferred by the respondent-plaintiff against the judgment and decree dated 24.07.2012 passed by the Civil Judge (Junior Division), Phul, dismissing the suit of the respondent-plaintiff for permanent injunction restraining the appellants-defendants from interfering in the land owned by the respondent-plaintiff and his brother being gairmumkin passage (pahi) as detailed in the headnote, in the area of village

Dhade, Tehsil Phul, District Bathinda, purchased by them from Desa Singh by sale deed No.1657 dated 25.06.2007, has been allowed.

2. It is the contention of counsel for the appellants that the learned Lower Appellate Court has not appreciated the pleadings and the evidence brought on record by the parties and has without any justifiable reason set aside the well reasoned and detailed judgment passed by the trial Court. He contends that it is apparent from the sale deed Exhibit D-3 of Shinder Kaur that no pahi is shown towards the land of the appellants-defendants. If there is no pahi shown in the land of the appellants-defendants, there was no question of continuity of the pahi from the main road. It could be on the other side of the plot in the sale deed Exhibit D-3. He contends that the respondents in the garb of the judgment and decree passed by the Lower Appellate Court would illegally own and possess the land of the appellants-defendants which cannot be permitted. Reliance has also been placed upon the evidence led by the appellants to contend that the respondent-plaintiff has not been able to establish the existence of the pahi at the spot, as has been asserted. He, thus, contends that the appeal may be allowed by setting aside the impugned judgment and decree and restoring that of the Civil Judge (Junior Division), Phul.

3. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgment.

4. As per the evidence produced by the respondent-plaintiff, especially Dhan Singh son of Lal Singh, who is the attesting witness of the

sale deeds No.1657 and 1658 dated 25.06.2007, the execution of the same is duly proved. Sale deed No.1657 pertains to land measuring 6 kanals and 8 marlas which has been bought by the respondent-plaintiff Wariyam Singh along with his brothers for a sale consideration of ₹2,80,000/-. Access to this land, so purchased, has been obtained by purchasing land measuring 1 kanal 12 marlas gairmumkin pahi by sale deed No.1658 dated 25.06.2007 for a sale consideration of ₹70,000/-. Both these sale deeds have been executed by Desa Singh son of Mit Singh, who was owner in possession of the land as per his share. One segment of the passage is 1 karam x 36 karam and on the northern side of the said passage there exists temple and land of Desa Singh, on the eastern side there exists a road, on western side there exists a pahi and on the southern side there exists land of appellant-Jagdev Singh. The second segment of the said passage is 2.5 karam x 63 karam on which eastern side is a pahi, on western side there exists land of the respondent-plaintiff, northern side is the land of appellants-defendants. The third segment of the said passage is 2.5 karam x 25 karam, on eastern side of which is the land of appellant-Jagdev Singh, on the western side land of respondent-plaintiff, on southern side land of Jarnail Singh and on northern side there is a passage. The place from where the passage starts i.e. from the main road, Desa Singh, the original owner of the land, has left land measuring $\frac{1}{2}$ karam for the purpose of pahi. Therefore, this passage (pahi) is 3 karam x 36 karam on the beginning of the road and then 2.5 karam x 63 karam followed by 2.5 karam x 25 karam which leads to the houses constructed by the respondent-plaintiff and his brothers in the land

measuring 6 kanals and 8 marlas bought by them by sale deed No.1657 dated 25.06.2007.

5. A detailed site plan which has been prepared by Amarjit Singh, Draughtsman, who appeared as PW-1, has been appended along with the suit which has been duly proved on the basis of his evidence. The Local Commissioner has also reported the existence of the pahi. It is not in dispute that there are no specific numbers which would depict the possession of any person of the joint land holding. Khasra girdawaris Exhibits D-1 and D-2 pertain to some of the numbers only out of the joint land where appellants have been shown in possession of khasra Nos.775/1 and 779/1. But this would not help the appellants for the reason that the respondent-plaintiff has nowhere claimed that he had purchased land from any of these khasra numbers. As a matter of fact, in the cross-examination, appellant-Jagdev Singh has primarily admitted the existence of pahi at the spot and has also admitted the boundaries of the land of Desa Singh stating that the land of Desa Singh is towards the northern side and eastern side of his land. Land of Desa Singh towards eastern side being 120 feet has also not been denied and the appellants have admitted the fact that the boundaries towards northern side is 120 karams in length. Admission has also been made by him that there is 120 feet long pahi abutting his land towards eastern side and the same is in use at present. He has categorically admitted that the eastern side of land is abutting the land of Wariyam Singh, respondent-plaintiff towards the western side and has been purchased by the plaintiff Ramdesa Singh. DW-2 Karnail Singh and DW-3 Nachhatar Singh have also

admitted existence of the pahi at the spot. This clearly establishes the existence of pahi at the site and on the basis of the sale deed as proved by the respondent-plaintiff, the pahi is owned by the respondent-plaintiff.

6. The assertion of the counsel for the appellants that in the sale deed Exhibit D-3 executed by Desa Singh in favour of Shinder Kaur, no pahi has been shown towards the land of the appellants but the said sale deed cannot be said to be a conclusive proof of this fact, especially when the appellants have not led any evidence to show that the land beneath the passage (pahi) is his ownership or is in his possession and in what khasra number it falls. Admittedly, with the purchase of the land by the respondent-plaintiff, he has stepped into the shoes of Desa Singh, who is admittedly a co-sharer in the joint khata and, therefore, now has the same rights of a co-sharer in the joint land which right he can exercise, especially when he has been able to prove firstly the purchase of the land from Desa Singh and secondly the existence of the pahi from the main road to his house which fact has not only been admitted by appellant-Jagdev Singh but his other two witnesses also namely DW-2 Karnail Singh and DW-3 Nachhatar Singh. Admission is the best evidence and, therefore, the appellants cannot now assert that there exists no pahi on the spot.

7. The findings as returned by the Lower Appellate Court being on due consideration of the pleadings and the evidence brought on record, cannot be faulted with.

8. No other point has been raised or argued by the counsel for the appellants.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.11330-C of 2015, stands disposed of as infructuous.

March 28, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**