

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

Regular Second Appeal No.4859 of 2015 (O&M)

Date of Decision: February 19, 2016

Pritam Singh

.....**APPELLANT.**

VERSUS

Harinder Singh

.....**RESPONDENT.**

Regular Second Appeal No.5026 of 2015 (O&M)

Pritam Singh

.....**APPELLANT.**

VERSUS

Harinder Singh

.....**RESPONDENT.**

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr.Arun Abrol, Advocate
for the appellant.

SURINDER GUPTA, J.

1. The above captioned appeals have been taken together as the same arise from common judgment of the Courts below, decreeing, the suit filed by Harinder Singh-respondent, seeking the relief of mandatory injunction directing the defendant-appellant to restore three *karam* wide

passage out of khasra no.35//6 to the land purchased by respondent from defendant comprising khasra Nos.23//24(8-0) and 35//5 min (6-18) and also to restore *khall* and electric starter in the original position situated in village Kishanpura @ Bakshiwala, Tehsil and District Patiala.

2. The appellant also filed suit seeking the relief of injunction to restrain the defendant-respondent from interfering in peaceful possession of his land measuring 52 kanals 19 marlas as fully described in the headnote of the plaint, dispossessing him or encroaching upon his land in any manner.

3. In later part of the judgment, Harinder Singh will be referred as plaintiff and Pritam Singh as defendant, as per the civil suit filed by Harinder Singh.

4. The case of the plaintiff is that he was allowed passage of 3 *karam* from land bearing Khasra No.35//6, right to use the water course and 1/4th share in the tubewell connection of the defendant, from whom he had purchased the land bearing Khasra No.23//24 (8-0) and 35//5 min (6-18), as mentioned above. He had been using the passage and also contributed ₹18,000/- towards expenses of extension of load of electric connection and the reinstallation of tubewell. However, the defendant had demolished the tubewell room and shifted the electric starter to his residential house, which is situated near the said room. The plaintiff could not operate the tubewell as and when required, due to presence of ladies in the house. Defendant had also closed the water course i.e. *khall*, which was being used by plaintiff for carrying water to his field and blocked the passage of plaintiff in land bearing Khasra No.35//6.

5. The defendant admitted the sale of land to plaintiff vide sale deeds dated 7th June, 1995 and 23rd June, 1995, but denied that the passage of three *karam*, 1/4th share in the electric motor and tubwell along with user of water course (*khall*) was also sold to the plaintiff. He took the plea that these facts were got recited in the sale deeds by the plaintiff of his own in the absence of defendant.

6. It is not disputed that there is recital in the sale deeds executed by defendant in favour of the plaintiff that three *karam* passage from land of defendant bearing Khasra No.35//6 was given to plaintiff for the purpose of ingress and egress to the land purchased by him from the defendant. The share in the tubewell along with right of '*aab pashi*' (irrigation) were also given to the plaintiff vide above sale deeds. The Courts below while relying on the recitals in the sale deeds, decreed the suit of the plaintiff and declined the relief of injunction as sought by the defendant in his separate suit.

7. Learned counsel for the appellant-defendant has argued that though there is recitals in the sale deeds regarding the allowing of passage, sale of 1/4th share of the tubwell and user of *khall*, but at the spot neither there is existing any passage nor any water course (*khall*), which shows that recitals in the sale deeds were not as per the consent of the defendant-appellant. An application was moved by the appellant for appointment of local commissioner to prove this fact, but the same was declined by the first Appellate Court.

8. I have gone through the paper book and judgment of Courts below with the assistance of learned counsel for the appellant.

9. The defendant-appellant has admitted the execution of sale deed and it is a fact that till date, he has never challenged the recitals made therein. In view of this, he is debarred from taking plea in the written statement that he has not sold the right in the tubwell, passage or water course to the plaintiff, as per the recitals in the sale deeds.

10. Both the Courts below have relied on recitals in the sale deeds, while allowing the claim of the plaintiff. So far as the appointment of local commissioner is concerned, the same would have served no purpose as the case of plaintiff is that defendant-appellant has demolished the water course and also blocked the passage. Even if the passage or water course is not in existence at the spot, the plaintiff has the right to get the same restored, as per terms of sale deed executed by defendant in his favour.

11. On perusal of the judgments of the Courts below, I find no factual or legal infirmity therein, calling for any interference.

12. No substantial question of law requiring determination arises in these appeals, which have not merits.

13. Dismissed.

February 19, 2016.

deepak/jv

**(SURINDER GUPTA)
JUDGE**