

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

**RSA No.4913 of 2015 (O&M)
Decided on: 31.05.2016**

Chattar Sujjan Singh

....Appellant

Versus

Daya Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ish Puneet Singh, Advocate
for the appellants.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit of the appellant/plaintiff for declaration and mandatory injunction was dismissed by the learned trial Court vide judgment and decree dated 31.10.2011 and the appeal against the judgment and decree passed by the trial Court came to be dismissed by the Additional District Judge, Adhoc (FTC), Rupnagar.

The appellant/plaintiff staked his claim to passage ABCD leading to the main road on the premise that he is using the passage for the past more than 20 years and has acquired easementary right thereto, therefore, the respondents/defendants be directed to remove the newly

constructed wall AB forcibly.

Counsel for the appellant has submitted that the trial Court refused to accept plea of the appellant in view of its observations recorded in Para 14 of the judgment but by disregarding the fact that respondent No.4 who is stated to be owner of plot No.40 on which the passage in question is stated to be in existence, has admitted his claim. It is further argued that the trial Court did not record any finding whether the passage in question is a part of plot Nos.40 or 46 in view of *inter se* dispute between the defendants.

I have heard counsel for the appellant and perused the paperbook particularly the judgments passed by the Courts below.

Counsel for the appellant, in response to a query raised by the Court, has fairly conceded that the appellant does not press his claim on the plea of easement of necessity. It is an undisputed position in law that in order to acquire easement by way of prescription, it is incumbent upon the plaintiff to allege and prove that a right of easement has been peacefully and openly enjoyed by him claiming title thereto, as an easement and as of right, without interruption and for 20 years.

The appellant has alleged that he is residing in a house in village Kamalpur and the gate of house opens towards East in the passage marked as ABCD and he has been using the said passage for the past more than 20 years without any resistance or obstruction from anybody including the defendants.

Defendants No.1 to 3 (contesting) have taken a plea that the plaintiff has constructed a house in the area of Toba belonging to

the Gram Panchayat of village Kamalpur in February, 1988 illegally and forcibly without any right. The appellant filed replication to the written statement controverting the allegations that he constructed his house in the area of Toba with the plea that he had purchased the plot. However, he remained silent as to the year in which he constructed the house. He has not even mentioned the date, month and year when he purchased the plot. The appellant appeared in the witness-box and deposed that he constructed his house about 20 years ago but did not specify the month and year in regard to its construction. The factum of having constructed the house about 20 years ago was recorded in cross-examination of the appellant conducted on 16.03.2009 meaning thereby that he constructed his house in the year 1989 and filed the suit in the year 2004. The learned trial Court, by taking into consideration the aforesaid material aspects refused to accept plea of the appellant that he has acquired easementary right to the suit property by way of prescription.

So far as contention of counsel that the trial Court has not taken into consideration the admission made by defendant No.4, owner of plot No.40 is concerned, it has been sufficiently proved on record that there is a serious dispute between defendants No.1 to 3 on one side and Hazura Singh defendant No.4 on the other side, if the wall AB sought to be got removed by the appellant in the present suit was constructed by defendants No.1 to 3 in plot No.46 claimed to be of their ownership or in plot No.40 alleged to be owned by defendant No.4. It has further been proved that defendants No.1 to 3 on one side and defendant No.4 on the other are litigating *inter se* with regard to plot

Nos.46 and 40. It appears to the Court that the present suit was filed by the appellant in connivance with defendant No.4 to create evidence against defendants No.1 to 3 in view of the litigation *inter se* the defendants. Under these circumstances, the appellant cannot derive any advantage to his contention from the alleged admission by defendant No.4.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*.

31.05.2016
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(REKHA MITTAL)
JUDGE