

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

RSA No.2907 of 2014

Date of Decision.17.08.2016

Surinder Singh

.....Appellant

Vs.

Sarabjit Singh

.....Respondent

Present: Mr. Abhinav Gupta, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit for permanent injunction and consequent relief of mandatory injunction, has been decreed against the defendant and he has been restrained from encroaching upon or blocking the passage situated in village Birdhano, Tehsil Nabha, District Patiala on the finding that the passage is 3 karms wide which leads to the land of the plaintiff in khasra No.13 of khewat No.341.

Mr. Abhinav Gupta, learned counsel for the appellant submits that the aforementioned suit, *ex facie*, was not maintainable in law, as no declaration *viz-a-viz* easementary rights has been sought. With the consent of the parties, local commissioner was appointed, who filed his report and against the aforementioned report, objections were filed. Even reply was also filed against the objections but the same remained undecided and the trial Court heavily relied upon the said report. Though the lower Appellate

Court noticed the factum of filing of the objection but gave a finding on merits of the matter.

In fact, there is no passage in khasra No.13. The plaintiff has failed to discharge the onus viz-a-viz the existence of khasra number. No doubt, the sale deed of the father of the respondent-plaintiff showed the existence of passage but the fact remains that the after his demise, there was a partition amongst the siblings. All these factors have gone unnoticed and therefore, there is illegality and perversity in the judgments and decrees passed by the Courts below, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. As per the *ratio decidendi* culled out in the judgment of Division Bench of this Court in **Balbir Dewan Vs. Naveen Chander AIR 1989 P&H 257**, it is now settled law that objections against the report of local commissioner are not required to be filed. Since the local commissioner was appointed with the consent of parties, it was open for the defendant to seek his cross-examination. Having failed to do so, the objections were filed for the sake of it. The report showed that there was existence of passage and that is why the Court had granted injunction by noticing the aforementioned fact. Even the record of consolidation also showed the existence of passage. Be that as it may be, no person i.e. either the plaintiff or defendant can be permitted to encroach upon the passage which has been used for access to the agricultural field/land of the respective parties. I shall scribe to the aforementioned view particularly when record of the consolidation showed that there was already existed a

passage, in essence, there was no need to seeking declaration of a fact which is already in existence in the revenue record.

Keeping in view the aforementioned facts, I do not differ with the findings rendered by the Courts below as the same are based upon preponderance of both documentary as well as oral evidence, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 17, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No