

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

**Regular Second Appeal No.5764 of 2015 (O&M)
Date of Decision: September 16, 2016.**

Jagdish Lal and others

.....APPELLANT(s).

VERSUS

Shakuntla Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Piyush Kant Jain, Advocate with
Mr. Rajshekhar, Advocate
for the appellant (s).

Mr. G.S. Sidhu, Advocate
for the respondents.

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below whereby suit filed by appellants-plaintiffs seeking the relief of permanent injunction to restrain the defendants from demolishing the wall constructed on the southern side of Kuchaband Gali of Radha Krishan Colony, Radaur, near Govt. Senior Secondary School, Radaur, was dismissed and the counter claim filed by the respondents-defendants seeking direction to the plaintiffs to remove/demolish the illegally constructed wall in dispute, was decreed.

2. The only question which arise for consideration in this appeal is as to whether the findings of the Courts below that the street in dispute at the end of which wall in question has been erected by the plaintiffs, is a public street, is sustainable and based on evidence on record.

3. As admitted by plaintiff Jagdish Lal, while appearing as PW2, this street was constructed by the Government. He has not denied but showed ignorance about the fact that this street was constructed by Government under the Special Development Scheme after spending ₹3 lacs. This fact is also not disputed that when Sushil Kumar sold the plot to the owners of the houses on both sides, it was a kacha street.

4. Learned counsel for the appellants-plaintiffs has argued that the Courts below have wrongly taken note of the documents D1 to D6 which were in fact marked documents and not exhibited. These documents. Were not duly proved, as such, on the basis of these documents, the Courts below could not draw the inference that the street in question is a public street.

5. I agree with learned counsel for the appellants so far as his submission that the documents D1 to D6, which are copies of information obtained under Right to Information Act were not duly proved and the Courts below could not rely on these documents to draw any inference. However, there is admission of plaintiff Jagdish Lal himself that this street has been made pucca by the Government by spending public money. A street or passage which has been made pucca by the Government by spending public money cannot be termed as a private street passage and its user cannot be confined to few private persons until or unless there is agreement, covenant, notification or State decree to this effect. Public funds comes from tax payers' money and is usually used for common welfare. Even if, this plea of plaintiffs be believed that at one point of time; the street in dispute was left by the owners for the plots on both sides of the street; by allowing public authority to make this street pucca by spending lacs of

rupees, the plaintiffs had acquiesced the title of state over the street so as to treat it as a public street. Though public street has not been defined in Punjab Village Common Lands (Regulation) Act, 1961 as applicable to Haryana, the definition of public street as given under the Haryana Municipal Act, 1973 can be referred to understand the concept of public street. Section 2 (21) of the above Act defines the public street as follows:-

“public street” shall mean any street--

- (i) heretofore levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public fund, unless before such work was carried out, there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor, or
- (ii) which, under the provisions of section 180, is declared by the committee to be, or under any other provision of this Act becomes, a public street.

6. It is nowhere case of the appellants-plaintiffs that the street was constructed with public money without their implied or express consent.

7. In view of the above, even if the documents D1 to D6 be ignored, the conclusion drawn by the Courts below that the street in dispute is a public street, call for no interference.

8. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

September 16, 2016
Sachin M.

Whether speaking/reasoned: **Yes/No**

Whether Reportable: **Yes/No**