

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

**R.S.A No. 5882 of 2015 (O&M)
Date of decision :11.02.2016**

Surjeet and others

..... Appellants/defendants

Versus

Mohinder and others

..... Respondents/plaintiffs

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Naresh Kaushik, Advocate
for Mr. K.S.Dhanora, Advocate
for the appellants.

DARSHAN SINGH,J

CM No. 14645-C of 2015

This application has been filed under Section 5 of the
Limitation Act for condonation of delay of 28 days in filing the appeal.

Heard on the application.

In view of the reasons mentioned in the application, the
application stands allowed and the delay of 28 days in filing the appeal is
hereby condoned.

R.S.A No. 5882 of 2015

The present appeal has been preferred against the judgment
and decree dated 28.04.2015 passed by the learned Additional District

Judge, Kurukshetra, vide which the appeal preferred against the judgment and decree dated 10.10.2013, passed by the learned Civil Judge (Jr. Division), Kurukshetra, has been decreed

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiffs-respondents have filed the suit for permanent injunction on the grounds *inter alia* that there exists a public street in Khasra no.709 situated within *Abadi Deh* of village Sirsama, Tehsil Thanesar, District Kurukshetra and is adjoining to the land comprised in Khasra No.712/2. The plaintiffs-respondents have constructed their houses and also installed a tubewell. No other passage is available for ingress and egress to their houses except the public street existing in Khasra No.709. The street was constructed with concrete by the Gram Panchayat. The appellants-defendants in order to encroach upon the said street want to dismantle the street. Hence, the plaintiffs-respondents have filed the suit for injunction.

4. Appellants-defendants contested the suit on the grounds *inter alia* that the property in dispute comprised of Khasra No.709 belongs to Harijan Community of the village. Common well of the community was existing in the suit land and this well was not in use for the last 20 years. There does not exist any passage on either side of Khasra No.709 and with the grant of the Government, a Temple and Dharamshala were constructed by the Harijan Community. The respondents-plaintiffs were forcibly trying to take over the portion of the above said suit land by claiming it to be a public street. In fact, they have

no right, title or interest whatsoever in the suit property. They denied that plaintiffs have got a right to use it as a passage.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for?OPP
2. Whether plaintiffs have no locus-standi and cause of action to file and maintain the present suit?OPD
3. Whether the suit of the plaintiffs is not maintainable?OPD
4. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties?OPD
6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD
7. Whether the plaintiffs have concealed the true and material facts from the court?OPD
8. Whether the Civil Court has no jurisdiction to entertain and try the present suit?OPD
9. Relief.

6. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiffs, vide impugned judgment and decree dated 10.10.2013.

7. Aggrieved with the aforesaid judgment and decree, the appellants-defendants preferred the appeal and the same was dismissed by the learned Additional District Judge, Kurukshetra, vide impugned judgment and decree dated 28.04.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Naresh Kaushik, Advocate for Mr.

K.S.Dhanora, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that in the jamabandi, no street has been shown in Khasra No.709. He further contended that the oral evidence adduced by the plaintiffs-respondents also does not establish any street or passage as alleged by them. Plaintiffs-respondents have themselves constructed a room, so there is no question of existence of any passage at the spot. The statement of Sarpanch of the Gram Panchayat will not establish the site in dispute to be a passage/street. Thus, he contended that the learned Courts below have committed a serious error in decreeing the suit filed by the plaintiffs-respondents.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that the site in dispute is comprised of khasra no.709, which is the khasra number of the *Abadi Deh* of the village. It is a known fact that there is always one khasra number of the *Abadi Deh* which does not specifically described the street or the house situated therein. So, the plea raised by learned counsel for the appellants that the street has not been shown in jamabandi carries no substance. The existence of the street in the land comprised of khasra no.709 is fully established from the evidence adduced by the plaintiffs-respondents. The most important evidence is the copy of the resolution Ex.P-4 passed by the Gram Panchayat. PW-3 Raj Kumar, Sarpanch of the Village has proved the copy of the resolution. He categorically deposed that the street comprised in khasra no.709 was being used by the respondents for

ingress and egress to their houses. He further deposed that said street was constructed by the Gram Panchayat from its own funds and vests in the Gram Panchayat.

12. PW-1 Suraj Bhan has proved the site plan Ex.P-3, which shows that on the western portion of khasra no.709, there are houses and the passage of these houses has been shown towards the west i.e. towards the street in dispute. The other witnesses examined by the plaintiffs-respondents have also corroborated the case set up by the plaintiffs-respondents with respect to the existence of the street in question.

13. In order to rebut the aforesaid evidence, the appellants-defendants have placed on record the copy of demarcation report Ex.D-2, which has been proved by DW-4-Krishan Lal, retired Kanungo. But, this witness has admitted in the cross-examination that at the time of demarcation only the members of Harijan Community i.e. the representatives of the appellants-defendant were present. He also admitted that he has not started the measurement from any *pucca* point. Rather, he started the measurement from a wall identified by the appellants situated on the western side of khasra no.709, which cannot be considered to be the *pucca* point to start the measurement. Thus, the report Ex.D-2 relied upon by the appellants-defendants carries no evidentiary value.

14. It has also come in the evidence of the plaintiffs-respondents that there exists a pipe line underneath the street in dispute. It is also proved from the statement of PW-3-Ram Kumar that the street in question was constructed with concrete by the Gram Panchayat from its own

funds. So, there is no escape from the conclusion that the public street is in existence in the western portion of khasra no.709. Consequently, the appellants-defendants have no right to dismantle the street or to encroach upon the same. So, the concurrent findings arrived at by the learned Courts below requires no interference. in the second appeal while exercising the limited powers under Section 100 CPC.

15. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

16. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 11, 2016

s.khan

(DARSHAN SINGH)
JUDGE