

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4388 of 2014 (O&M)

Date of Decision: 02.05.2016

Amar Singh and another

.....

Appellants

Versus

Dalip Singh and others

.....

Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. Ravish Bansal, Advocate
for the appellants.

Jitendra Chauhan, J.

Having failed before both the Courts below, the plaintiffs have filed the instant regular second appeal assailing the judgment and decree dated 05.08.2013, passed by Additional Civil Judge (Senior Division), Barnala (for short 'the trial Court') and the judgment and decree dated 26.03.2014, passed by District Judge, Barnala.

In brief, the plaintiffs filed suit for permanent injunction restraining the defendants from laying *Pahi* (passage), *Khal* (water course) over the suit land measuring 14 kanals, 8 marlas.

The claim of the plaintiffs is that they are co-owners in possession of the suit land and the defendants are also co-owners in the suit land. However, the plaintiffs seek to restrain the defendants from carving out a water course and a passage. The defendants appeared and took a plea that the plaintiff no. 1 sold the land measuring 3 kanals, 8

marlas out of the disputed property to defendant nos. 6, 7 and 8 and one Darshan Singh and Ramesh Chand, Sat Pal and defendant, Dalip Singh vide sale deed dated 24.1.1995 by providing passage.

The trial Court appointed a Local Commissioner to visit the site. On the basis of the report of the Local Commissioner and the evidence adduced before it, the trial Court came to the conclusion that the passage was already in existence. Therefore, the suit was dismissed. The plaintiffs tested the judgment and decree of the trial Court before the lower appellate Court, but of no avail.

The grouse of the plaintiffs in the present appeal is that the report of the Local Commissioner has been acted upon, without considering the objections filed by the plaintiffs. The case of the plaintiffs is that the suit property is jointly owned and in possession of the plaintiffs and defendants but the defendants intend to carve out the water course and passage and also intend to raise construction over there, to change the nature of the property in dispute without partition. A local Commissioner was appointed by the trial Court at the instance of defendant No.2 to note down physical features existing at the spot. Report of the local Commissioner has been proved on record as Ex. D-10. As per Ex.D-10, the Local Commissioner conducted the demarcation of the property in dispute after giving notice to both the parties. A perusal of the Ex.D-10 reveals that the passage exists from mark D to Mark B and from mark B to mark C as per the site plan Ex.D-7. The said passage is a pucca passage. So, from the report of the

Local Commissioner, it stands proved that the passage already exists at the spot. This court does not agree with this contention of the learned counsel for the appellants that as objections filed by the plaintiffs to the report of the Local Commissioner were not decided by the trial Court, so report of the Local Commissioner cannot be read into evidence. Reliance in this respect can be placed upon ***Dalip Singh and another Vs. Gurdayal Kaur, 2011 (4) CCC 233***, wherein it was held that objections filed to the report of the Local Commissioner appointed by the Court are not maintainable. As such, learned First Appellate Court has rightly held that report of the Local Commissioner Ex. D-10 is admissible in evidence and the same can be looked into to adjudicate the controversy between the parties.

There is a concurrent finding of fact recorded by both the Courts below that the passage and the water course were in existence over the suit property. The report of the Local Commissioner clinched the matter, and helped the Court in arriving at a just decision. This Court does not find any reason to interfere in the well-reasoned judgments passed by the Courts below. No substantial question of law is involved in the present appeal.

Consequently, the appeal is dismissed in limine.

(JITENDRA CHAUHAN)
JUDGE

02.05.2016
SN