

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

RSA No.4402 of 2014 (O&M)

Date of Decision.21.10.2016

Roop Chand and another

.....Appellants

Vs

Girraj and another

.....Respondents

2. RSA No.4643 of 2014

Roop Chand

.....Appellant

Vs

Badley and others

.....Respondents

Present: Mr. Sanjeev Kr. Panwar, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.10173-C of 2014 in RSA No.4402 of 2014

For the reasons stated in the application, delay of 119 days in
filing the present appeal is condoned.

Application is allowed.

C.M. No.10806-C of 2014 in RSA No.4643 of 2014

For the reasons stated in the application, delay of 127 days in
filing the present appeal is condoned.

Application is allowed.

RSA Nos.4402 of 2014 and 4643 of 2014

The appellant-plaintiff is aggrieved of the dismissal of the Civil
Suit No.799/1 of 2008 titled as “Roop Chand Vs. Badley and others”

(hereinafter called as the 1st suit) and decretal of the civil suit No.201 of

2005 titled as “Girraj Vs. Roop Chand and others” (hereinafter called as the

2nd suit) by the lower Appellate Court which was dismissed by the trial Court.

Mr. S.K. Panwar, learned counsel appearing for the appellants submits that the appellant-plaintiff in the 1st suit averred that he is owner in possession of the suit property i.e. residential house marked with letters ABCD in the site plan attached and the measurements are, in North 59 ft, in East 63 ft and in West 128 ft. As per the site plan, in North is house of Khemi, in South is the *rasta*, in East house of Nathi and in West house of Badley and Poorna etc. The respondent-defendant, Girraj wanted to interfere into the passage for ingress of the house through the gate carved out and shown in the site plan. Both the witnesses of the Gram Panchayat have also shown existence of the *rasta*. The aforementioned evidence was enough for the Courts below to grant injunction, however, the plaintiff's suit has erroneously been dismissed i.e. the 1st suit and the suit of the defendant i.e. the 2nd suit has been decreed by heavily relying upon the report of the local commissioner which has not been done as per the High Court Rules and Orders. The local commissioner's report is wholly sketchy and mechanical in manner, thus, urges this Court for setting aside the judgments and decrees under challenge, in essence, allowing of the 1st suit and dismissal of the 2nd suit by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the report of the local commissioner appointed in the 2nd suit, was proved on record as Ex.P1. Even the report of the revenue record official showed that there was no *rasta*. The

aforementioned evidence leads to irresistible conclusion that the injunction sought for *rasta* as indicated in suit No.1 was only imaginary. Even the appellant-plaintiff in 1st suit and defendant in suit No.2 did not have any interim injunction. The suit is of the year 2005 and he had been using his property and therefore, filing of the suit is nothing but an act to fulfill the ulterior motive.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the Courts below as the same are based upon the correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. Both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

October 21, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No