

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

**RSA No.4824 of 2014(O&M)
Date of Decision-24.08.2016**

Satnam Singh	... Appellant
Versus	
Surjit Singh and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. V.K. Jain, Sr. Advocate with
Mr. Ravi Kadian, Advocate and
Ms. Mehak Sethi, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below in dismissing the suit.

[2]. Plaintiff filed a suit for permanent injunction seeking to restrain the defendants from opening any gate, door, window, ventilator or parnala for draining out the water of the roof of their house in any portion of the wall 'AB' towards northern side in the street shown in black colour as 'ABCDE' in the site plan.

[3]. Plaintiff pleaded that the Gram Panchayat and its affairs were managed by its Sarpanch Nirmal Dass. Suit was filed against the Gram Panchayat through its Sarpanch. The house of the plaintiff was ancestral house. Previously, it was kacha house and the same was owned and possessed by his father namely Pritam Singh. Father of the plaintiff died about 45 years back. After the

death of Pritam Singh, plaintiff came in possession of the property about 10 years back and made the site pucca. The street was shown in the site plan as 'EDFG' in black colour and the same was personal property of the plaintiff. Earlier, it was personal property of father of the plaintiff and was part of the kacha house. The house of Kuldeep Singh and Major Singh was situated on the northern side of the plaintiff house and on the northern side of the street 'EDFG'. On asking of aforesaid Kuldeep Singh and Major Singh, portion marked as 'EDFG' was left from the property of the plaintiff. Kuldeep Singh and Major Singh were given right to pass through the street only. The portion of street 'ABCDE' always remained as private property of the plaintiff and earlier to that, it was private or individual property of his father Pritam Singh. The street was the only street which leads to the house of Pritam Singh previously and now to the house of the plaintiff. There was a pacca flooring of bricks in the street 'ABCDEFG' shown in black colour. The flooring was done by the plaintiff after incurring huge expenses about 5-6 years back. There was a drain adjoining to the wall as shown by red colour in the site plan for draining out the water of the house of the plaintiff.

[4]. The plaintiff filed this suit claiming the property 'ABCDE' to be his private and personal property. There was a boundary wall of the plot of Gurmej Singh towards northern side of the street. The plot of Gurmej Singh had no gate, door, window, ventilator and parnala towards southern side in the street in question and also

towards western side in the street 'EDFG'. House of Surjit Singh-defendant No.1 was situated on the southern side of street 'ABCDE' and also on the southern side of the plaintiff house shown in yellow colour. House of Surjit Singh had a gate-cum-window towards eastern side in Rasta and western side in the street. Even the parnala for draining out the water of the house of Surjit Singh existed towards eastern and western side. There was no parnala, window, ventilator, door, gate in any portion of the wall 'AB' towards northern side of the street in dispute i.e. 'ABCDE' shown in black colour. With this background, the suit for permanent injunction came to be filed at the instance of the plaintiff.

[5]. Suit was contested by the defendants.

[6]. Both the Courts have held that the plaintiff could not prove the nature of street to be private street exclusively meant to have access to his house only. Besides, the case filed by the plaintiff was that the street in dispute marked by letters 'ABCDE' was his personal/private street. Earlier, it was private street of his father Pritam Singh. He made the brick pavement of the kacha street by spending huge amount from his own pocket. The street connected the house of the plaintiff alone. The attorney namely Charan Singh appeared on behalf of plaintiff and admitted that the street was lying vacant and they have taken the possession. The witness also stated that the street was laid by Gurnam Singh, Sarpanch and admitted the case of the defendants that street in

question vested in Panchayat as common street and was not individual property of the plaintiff. The cross examination of the witness also pointed out that the points as referred in the evidence were not shown in the site plan Ex.P1 by the plaintiff.

[7]. The submission as raised by learned counsel for the plaintiff on the point that street 'DEFG' was the private street of the plaintiff and was given for private use of Kuldeep Singh and Major Singh about 10 years back and they have only right to pass through it at their request, was contradicted by plaintiff's own witness namely Mohabat Pal Singh who appeared as PW 2, when he stated that forefathers of Kuldeep Singh used to pass the street 'DEFG'. Father of Kuldeep Singh died about 45 years back. That fact itself shows that street in question was in existence even 45 years ago. The claim of the plaintiff viz-a-viz the alleged permission granted to Kuldeep Singh and Major Singh to use the street stood falsified in view of evidence of the plaintiff itself. As regards lack of evidence on the part of the defendants, it was found that plaintiff was to stand on his own legs and he could not have taken any benefit out of the weakness of defendants' case.

[8]. Both the Courts have concurrently decided against the plaintiff on the basis of appreciation of evidence on record. I am of the firm view that re-appreciation of evidence cannot be done in regular second appeal. The findings recorded by the Courts below are not proved to be the result of misreading of evidence or having

suffered with any perversity. No law point worth consideration is involved in the present appeal. The main stress of the plaintiff was that the street was private street which he could not prove by leading any cogent evidence, rather the evidence led by him in the form of Charan Singh and Mohabat Pal Singh went against him. The street 'ABCDE" and street 'DEFG' were not proved to be private street of the plaintiff on the basis of material on record.

[9]. This Court is not in a position to give different interpretation to the evidence on record. Consequently, this appeal is found to be total devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

24.08.2016
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No