

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

RSA-868 of 2014 (O&M)

Date of decision: 01.02.2016

Palwinder Singh

...Appellant

Versus

Kabul Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. M.S. Dhami, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The trial Court vide judgment and decree dated 13.03.2013, dismissed the suit for permanent injunction filed by the plaintiff/appellant. The appeal there against, preferred by the plaintiff/appellant was also dismissed by the learned Appellate Court, vide judgment and decree dated 22.08.2013.

2. All the findings recorded by the trial Court were affirmed by the 1st Appellate Court, after discussing and evaluating the oral as well as documentary evidence on record.

3. Hence, the instant appeal at the behest of the plaintiff/appellant.

4. It is contended that both the Courts below have not appreciated the fact that the respondent-defendant had duly admitted in his cross examination that his house is situated towards eastern side of the passage in dispute and on backside of his house, there is property of his brother Chuhar Singh. Further this witness had also admitted that the width of the passage in question was increased from 1 karam to 1 ½ karam. In fact, the appellant is the owner of the suit property. No doubt, the defendant-respondent was owner of portion marked as ABC in the site plan and the appellant was owner of the yellow coloured portion, however the appellant gave the yellow portion to the respondent and in lieu of that, he received portion marked ABC from the respondent-defendant. The respondent has no concern with the property marked ABC. The learned counsel further contends that the respondent-defendant had admitted in his cross examination regarding the fact of execution of the agreement qua yellow portion.

5. I have heard the contentions of learned counsel for the appellant.

6. The perusal of the record reveals that the plaintiff while appearing as PW-2 had admitted that he was not in possession of any document regarding the property shown in yellow colour. It was further admitted by him that he purchased the property marked ABC through transfer deed which was executed in the year 1982. The transfer deed was not executed in the Tehsil Office and the same was written by one Mohan Singh. However, neither the appellant had incorporated the said transfer deed in the revenue record nor he had produced the same before the Courts below. In fact, the respondent-defendant is shown to be the owner of portion ABC. Further, the said deed writer, Mohan Singh has not been examined by the appellant/plaintiff to prove the transfer deed. The plaintiff failed to prove his case before the Courts below, therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. This Court finds that the contentions have no merit as they only relate to the appreciation

of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. In **Kashmir Singh Vs. Harnam Singh and another**, 2008(2) RCR (Civil) 688, it has been held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

7. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

01.02.2016

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(JITENDRA CHAUHAN)
JUDGE