

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No. 92 of 2014 (O&M)

Date of decision:30.5.2016

Paramjit Kaur and another

... Appellant

versus

Bupinder Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Manish Kumar Singla, Advocate,
for the appellants

...

To be referred to the Reporter: Yes/No

AMOL RATTAN SINGH, J. (Oral)

1. The appellants herein are the plaintiffs, who had filed a suit seeking a decree of permanent injunction against the respondents-defendants, injuncting them from using a street abutting their (appellants') house, which they could not prove to be a public street.

The specific finding of the Courts below is that the street was actually a private street carved out on land belonging to the defendants, with which the appellants-plaintiffs had no concern. It was further found that the appellants-plaintiffs have an access to the main street; (hence, obviously there is no issue of any easement of necessity).

Consequently, the suit filed by the appellants-plaintiffs was dismissed by the learned Civil Judge (Junior Division), Dhuri, vide his judgment and decree dated 7.11.2012, and the first appeal filed against that judgment and decree, by the appellants-plaintiffs, was also dismissed by the

learned Additional District Judge, Sangrur, vide his judgment and decree dated 24.8.2013.

Thus, the appellants are in second appeal before this Court now.

2. Learned counsel for the appellants has drawn attention of this Court to Ex.P8, i.e. the agreement to sell made between appellant No.1 (wife of appellant No.2) and one Ghundu Khan, from whom the suit property was purchased. The said agreement to sell dated 9.3.2007 (leading upto the sale deed dated 20.4.2007), also contains a recital that there is a path on the eastern side of the property purchased by appellant No.1 from the aforesaid Ghundu Khan.

Learned counsel has also drawn attention of this Court to the fact that respondent-defendant No.1, Bhupinder Kumar, is one of the signatories to the agreement to sell, obviously as an attesting witness thereto. Therefore, it is contended by the learned counsel that the defendants had acquiesced to the use of the street as a public street and hence, the appellants could not be enjoined from opening a window and constructing a rain water pipe from their property running on to the street, which now the respondents-defendants were in the process of closing down by building upon the said street.

3. Having considered the argument of the learned counsel for the appellants and also having perused the agreement to sell (Ex.P8 before the Courts below), upon which reliance has been placed by learned counsel, it is seen that the said agreement to sell is only with regard to the purchase of a plot by appellant No.1 from Ghundu Khan, which, no doubt, describes that

there is a street on the eastern side of the said plot. Nowhere has any mention been made with regard to the usage of the said street by the appellants. As already noticed, the Courts below have recorded a finding of fact that the street was not a public street; no document in that regard ever having been produced by the appellants-plaintiffs and the Gram Panchayat too never having been impleaded in the suit, by which any evidence could be led to corroborate the contention that the street in question was actually a public street. Hence, if simply at the time of the purchase of the plot by appellant No.1 from Ghundu Khan, there was a private street belonging to another person running on the side of the plot in question, the status of the said private street could not be converted to a public street, thereby injuncting the defendants from using it in any other manner, unless there is any contract between the appellants and such owner of the private street, with regard to the usage thereto. No such contract having been produced by the appellants by way of any evidence to prove that the said street was a public street, I see no error in the findings of the Courts below as would require interference by this Court.

4. Consequently, finding no merit in this appeal, it is dismissed in limine, with no order as to costs.

30.5.2016
pk

(AMOL RATTAN SINGH)
JUDGE