

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

RSA No.824 of 2010 (O&M)

Date of decision : 28.08.2017

Bal Kishan @ Hari Singh

...Appellant

Versus

HUDA and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay S. Kajla, Advocate for the appellant.

Mr. R.D. Bawa, Advocate for the respondent No.1.

Mr. Apoorv Garg, DAG, Haryana for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts.

The plaintiff claimed a passage from the acquired land on the ground that the plaintiff does not have any passage to his residential premises.

Learned First Appellate Court while dismissing the appeal has recorded as under:-

“15. Ex.D6 is the Akshizra brought on record by Sunder Lal Patwari which shows un-partitioned Khasra No.9868/6681 with plaintiff's house on the extreme southern side and rasta on the northern side abutting the Khasra. Plaintiff's own case is that the land of Khasra No.6681 was

partitioned in the year 2001 vide mutation Ex.P15 and Khasra No.6681/3 shown in Tatima was allotted to him. It is therefore quite clear that at the time of acquisition i.e. in the year 1985 the plaintiff had access to his residential kothi from the rasta comprised in Khasra No.6683. The crucial date for determination of right of easement is the date of sale and easement of necessity is not available to a person if an alternative passage was available for access to his property other than the passage through the land sold to another. On the date of acquisition, Khasra No.6681 was un-partitioned and could be approached from abutting rasta comprised in Khasra No.6683, so, the disputed rasta from the green belt was not the only passage. Subsequent thereto, plaintiff alongwith other co-sharers of Khasra No.6681 partitioned the land orally without making provision for any rasta/passage. The oral partition consequent to which mutation Ex.P15 was sanctioned appears to be an intentional, deliberate and clear attempt on the part of plaintiff and other co-owners to create a situation in which no other 'rasta' is available for plaintiff's house other than the disputed rasta through the green belt. The court cannot come to the rescue of a person attempting to usurp a portion of green belt in the garb of easement of necessity. Report of Local Commissioner Ex.P4 no doubt mentions that the disputed rasta is the only passage to plaintiff's house but the same is of no help as it came into existence after the filing of the present suit."

It is clear from the reading of the aforesaid finding that the land comprised in khasra No.6681 was a joint khasra number. Passage was available to the plaintiff from khasra No.6683. However, while partitioning the land in the year 2001, the plaintiff did not claim any passage for himself.

Now the plaintiff wants a passage from the acquired land. It was the duty of the plaintiff to seek passage at the time of partition as the joint land was having the passage.

In these circumstances, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts.

Regular Second Appeal is dismissed.

28.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No