

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

**RSA No.213 of 2016 (O&M)
Date of Decision:05.12.2017**

Ombir and others

...Appellants

Versus

Karan Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vikram Singh, Advocate for
Mr.J.P.Jangu, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants are in the regular second appeal against the judgment passed by the learned Additional District Judge, Jhajjar.

The plaintiff filed a suit for permanent injunction and mandatory injunction, claiming that the parties are the co-owners in possession of a large Khewat situated in Village Khroda, District Jhajjar. It was pleaded that by mutual consent and family settlement, the plaintiff was in settled possession of land comprised in Rectangle No.56, Killa No.8 and constructed his house, whereas defendants were in settled possession of land comprised in Rectangle No.56, Killa No.9 and they have also constructed their house. The plaintiff further pleaded that the parties with mutual consent left two passages i.e. one on the northern side and second on the southern side of Killa Nos.8 and 9, respectively.

The learned trial court dismissed the suit on the ground that partition proceedings are pending and parties are the co sharers in the

property and therefore, the suit for injunction is not maintainable.

The learned first appellate court after looking into the fact that partition proceedings are taking long and requirement for passage is immediate, directed the defendants to open a passage 10 feet wide on the northern side of Killa Nos.8, 9 and 10.

Defendants-appellants have filed the instant appeal against the aforesaid judgment of the learned first appellate court.

I have heard the learned counsel for the appellants at length and with his able assistance gone through the impugned judgments passed by the courts below.

Dispute in the present case is with regard to passage to the houses of plaintiff and defendants. The learned first appellate court has discussed the evidence in detail and found that both the parties have already constructed their houses and have settled in exclusive possession of Killa Nos. 8 and 9. The court has further found that a passage was left with the agreement of the parties and the defendants are now not allowing the plaintiff to use the passage. Under these circumstances, the court directed the defendants to open 10 feet wide passage in the portion 'ABCD' situated on the northern side of Killas No.8, 9 and 10 and further not to interfere in the free access of the plaintiff and other co-sharers. The court also mentioned that this passage connects to a public street which is situated on the eastern side of joint land to Dadri-Bahu Road.

Learned counsel for the appellants could not point out any error

either in the appreciation of evidence by the learned first appellate court or any non reading of evidence.

In view of above, this Court does not find any error in the impugned judgment passed by the learned first appellate court. Accordingly, the present regular second appeal is hereby dismissed. The pending application, if any, shall also stand disposed of.

05.12.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No