

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

**RSA 1431/2015 (O&M)
Date of decision:13.12.2017**

Amrik Singh and another

.....Appellants

v.

Shabeg Singh

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.OP Hoshiarpuri,Advocate for the appellants.

Jaswant Singh,J,(Oral).

Plaintiffs/appellants are in second appeal against concurrent findings returned by both the Courts below whereby their suit for permanent injunction was dismissed by Civil Judge (Senior Division)Ferozepur vide judgment and decree dated 11.12.2012 and findings thereof affirmed in appeal by learned District Judge,Ferozepur vide judgment and decree dated 9.12.2014.

Plaintiffs filed a suit for permanent injunction to restrain the defendant/respondent from interfering in their possession over the suit land measuring 23 kanals 8 marlas comprised in Khasra No.16 Killa No.2(8-0)3 (7-8), 4(8-0), situated in the area of Village Peer Ismail Khan Wala, Tehsil and Distt.Ferozepur. As per case set up by the plaintiffs they were owners in possession of the suit land i.e. while plaintiff no.1 claimed to be owner to the extent of 320/480 share, plaintiff no.2 claimed to be owner to the extent of 160/480 share in the suit land. It was further alleged that though there was no passage in the suit land but defendant was threatening to interfere in

the possession of the plaintiffs so as to forcibly pass through it.

Upon notice, defendant filed written statement alleging therein that there existed a passage in khasra no.58 and defendant alongwith others were using the same for the last so many years and that plaintiffs wanted to forcibly encroach upon the said passage. Defendant also filed an application for demarcation. Pursuant to the said application, Revenue Officials visited the spot and a demarcation was carried out whereupon it was found that a passage still existed at the spot in khasra no.58 adjoining the land of plaintiffs.

On the pleadings of the parties, issues were framed. Both sides led evidence in support of their respective pleas. The Courts below, on the basis of evidence adduced by the parties dismissed the suit as noticed hereinabove. Hence the present appeal.

Heard learned counsel for the plaintiffs/appellants and with his able assistance perused the paper book carefully.

On the basis of evidence adduced during trial it has been found that undoubtedly plaintiffs are owners of the suit property comprised in Khasra No.16 and adjoining the suit property there exists a passage in khasra no.58. PW3 Surinder Mehrook, Advocate, who was appointed as Local Commissioner in his cross examination stated that the land of plaintiffs adjoins khasra no.58 and at the time of his visit Khasra no.58 (passage) was being cultivated by the plaintiffs who had sown wheat crop in the passage in dispute. Further, plaintiff no.1 during his cross examination testified that he had got no apprehension from defendant to forcibly occupy his land. Thus, it was rightly held that in the garb of suit for permanent injunction, plaintiffs wanted to encroach upon the passage existing in Khasra no.58. In these

circumstance the equitable relief of permanent injunction has rightly been declined by the Courts below.

In view of the above, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

13.12.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No