

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

RSA No.3675 of 2016(O & M)

Date of decision :27.09.2017

Ram Singh and others

...Appellants

Versus

Rajpal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jitender Nara, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

CM No.9599-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 141 days in re-filing the appeal is condoned.

Application is allowed.

Main Case

Defendants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for permanent injunction with a consequential relief of mandatory injunction claiming that defendants be restrained from encroaching upon a street falling in between the houses and plaintiffs should be permitted to install a gate in the street.

On the other hand, defendants pleaded that this is a blind passage which is exclusively used by the defendants and it was left by them for their personal use. Existence of the common street was denied.

Learned trial Court after appreciating the evidence available on the file including the report of a Local Commissioner appointed by the trial

Court had reported that a street is in existence and both the parties have opened their windows and doors towards this street, decreed the suit. Appeal filed by the defendants was also dismissed, after re-appreciating the evidence available on the file.

Learned counsel for the appellants has submitted that in the present case, the jurisdiction of Civil Court is barred because the street vest in the Gram Panchayat. He has submitted that in view of Section 13 of the Punjab Village Common Lands Act, 1961, the jurisdiction of the civil Court is barred.

I have considered the submission of learned counsel.

In the present case, the dispute is with regard to street. Plaintiffs are not claiming any right, title or interest in the street. The street is for common use. In such circumstances, the jurisdiction of the Civil Court cannot be held to be barred. Still further, the Courts below have appreciated the evidence available on the file, which is not shown to be erroneous. The Courts have further relied upon the report submitted by the Local Commissioner. Counsel for the appellants failed to point out any error in the reports submitted by the Local Commissioner.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, the present appeal is dismissed.

27.09.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No