

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

RSA No.4003 of 2015 (O&M)

Date of decision: 12.12.2017

Gian Singh

.....Appellant

Versus

Piara Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Malkeet Singh, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 07.02.2015 passed by the Additional District Judge, Shaheed Bhagat Singh Nagar, dismissing an appeal filed by defendant No.1-appellant against the judgment and decree dated 14.07.2014 passed by the Civil Judge (Junior Division), S.B.S. Nagar, whereby suit filed by plaintiff-respondent No.1 for mandatory injunction and permanent injunction, has been decreed.

Piara Singh-plaintiff (respondent No.1 herein) filed a suit for mandatory injunction to the effect that property in dispute was a public passage and was being used as such by plaintiff as well as other villagers. It was so reflected in the Jamabandi for the year 2004-05. Defendant No.1-appellant encroached upon a part of the said passage and thereafter, started threatening to instal a tubewell connection thereon. It was further stated that

defendant-respondent No.2 (electricity board) was also threatening to

release an electric connection in the name of defendant No.1 in aforesaid passage. Due to this reason, plaintiff and other people, including land owners, have been deprived of the use of public passage. Hence, the suit.

Upon notice, defendant No.1 (appellant) filed written statement denying the existence of public passage in the suit property. It was also denied that the passage in dispute was being used by people of village. It was stated that defendant No.1 had not encroached upon any part of the suit property, as there was no public passage. A passage for approaching the land of plaintiff was existing for the last many years and he was using the same. Plaintiff had no right to use two passages as one was already in existence. Defendant No.1 was using the tubewell connection through a submersible bore already installed for irrigating his land for the last three years, but due to some defect in the same, he had started irrigating his land from the electric connection. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

In a separate written statement filed by defendant No.2, existence of passage was admitted, but usage of the same by common public, was denied. Encroachment of the suit property by defendant No.1 was also denied.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPD

4. Whether the plaintiff is barred by his act and conduct to file the present suit? OPD
5. Whether the plaintiff is not coming to the Court with clean hand and has suppressed real and material facts from the Hon'ble Court? OPD
6. Whether the suit is not maintainable? OPD
7. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts while returning a finding of fact, had referred to the report Ex.P2/A given by the Local Commissioner (PW-2). As per this report, defendant No.1-Gian Singh (appellant) was found to be in unauthorized possession over the suit property. This fact was further authenticated by site plan Ex.P1 and aks-*shajra* Ex.P2. No objection was raised against the report submitted by the Local Commissioner. As per Jamabandi Ex.P3, suit property has been reflected as a common passage and the Gram Panchayat has been shown to be the owner of the same.

After going through the impugned judgments and documents Ex.P1, Ex.P2, Ex.P3 and report of Local Commissioner Ex.PW2/A, it is apparent that there is a *gair mumkin* rasta in Khasra No.85, measuring 05 Kanals 17 Marlas, which has been encroached upon by defendant No.1-appellant. In the absence of any evidence of ownership in favour of the appellant (defendant No.1), the suit of the plaintiffs has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

12.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No