

RSA No. 6045 of 2016 (O&M)

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

**RSA No. 6045 of 2016 (O&M)
Date of Decision: 20.2.2017**

Joginder Singh and others

.....Appellants

Vs.

Shamsher Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sameer Sachdeva, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 18.10.2016 passed by learned first appellate court, whereby first appeal of the plaintiffs was dismissed and the impugned judgment and decree dated 20.12.2014 of the learned trial court, dismissing their suit for permanent injunction and mandatory injunction, were upheld, plaintiffs have approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned trial court in para 2 of its impugned judgment, are that plaintiffs were using the suit property, i.e. public passage for going to their respective 'ruris' and houses since the time immemorial. The said public passage being Shamlat Deh vested in the Panchayat of the village. Towards the East and towards the South of the passage in dispute, there existed ruris and houses of the plaintiffs. Towards

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the West of the same, there existed a link road of village Lakhnaur and towards the North of the same, there was vacant portion and minor canal. Plaintiffs used to tie their buffaloes towards the North East of said passage. It was stated that a week ago, defendants, by creating nuisance, made an attempt to raise construction over the public passage with intention to close the same. Then due to intervention of co-villagers, the matter was reported to the SDM, Mohali, and then the Tehsildar, SAS Nagar, Mohali, visited the spot and removed said 'malba' from the public passage and got opened the public passage for the convenience of the inhabitants of village Lakhnaur. It was stated by the plaintiffs that the Sarpanch of the village was also in collusion with the defendants, as she was supporting the defendants. The only motive of the defendants behind the illegal construction was to increase the value of their properties which was adjacent to the public passage in dispute. It was the grievance of the plaintiffs that they belonged to Scheduled Caste community and they being from labour class, were very poor persons and were unable to raise long litigation with the defendants, who being rich and having high approach with the administrative level.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. However, plaintiffs did not file any replication. On completion of pleadings of the parties, learned trial court framed the following issues.

1. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP.
2. Whether the plaintiffs are entitled for mandatory injunction as prayed for? OPD
3. Whether the plaintiffs have no locus standi to file the

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present suit? OPD.

4. Whether the civil court has no jurisdiction to entertain, try and decide the matter in dispute? OPD.

5 Relief

With a view to prove their pleaded case, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, their suit was dismissed with costs, vide impugned judgment and decree dated 20.12.2014. Dissatisfied, plaintiffs filed their first appeal which also came to be dismissed by learned first appellate court, vide impugned judgment and decree dated 18.10.2016. Hence this regular second appeal at the hands of the plaintiffs.

Heard learned counsel for the appellants.

The pleaded and argued case on behalf of the appellants was that defendants-respondents be restrained from blocking a public passage, however, plaintiffs failed to prove the very existence of public passage. Once the plaintiffs have failed to prove very existence of public passage, their suit was bound to fail, which has been rightly dismissed by both the learned courts below. Concurrent findings of facts have been recorded, which have been found based on sound reasons, warranting no interference at the hands of this Court and the impugned judgments and decrees deserve to be upheld.

Appellants being the plaintiffs, onus was on them to prove their case by leading cogent evidence, however, they miserably failed to do so. Appellants did not prove even the report of Local Commissioner appointed

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by learned trial court. Plaintiffs did not examine the Local Commissioner, because of which, his report remained as an unexhibited document and the same could not be proved, in accordance with law. It was rightly held by learned courts below that once the Local Commissioner did not step into the witness box, his report could not be read into evidence. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant findings recorded by learned first appellate court in para 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“There is another potent reason to arrive at that no such public passage is in existence, much less it being the only passage leading to the property of the plaintiffs. Admittedly Surjit Kaur wife of plaintiff Kesar Singh (PW1) remained the village Sarpanch from the year 2008-2013. Prior thereto wife of PW5 Joginder Singh was the village Sarpanch from 2003-08. During the tenure of Sarpanchship of wife of Joginder Singh, Surjit Kaur was a member panchayat. In his cross-examination, plaintiff Joginder Singh disclosed that during her tenure as village Sarpanch, his wife constructed streets and drains in the village. If the plaintiffs are using the disputed passage since the time

immemorial, which is being claimed to be the only passage leading to their houses, why it was allowed to remain kacha? Plaintiffs may belong to Schedule Caste category, defendants may be influential persons but once by operation of law, plaintiffs participated in the political process and came into power especially when wife of Joginder Singh became the village Sarpanch, there was no reason not to make the said passage pucca by brick paving it. The only reason for not doing so appears to be that no such passage, much less a public passage, exists at the spot. Had it been a public passage, nobody could have objected the village Sarpanch from brick paving it to make it pucca. It was in these circumstances that proving on record latha of the village became important. No doubt village abadi which is situated within the lallakir seldom is depicted in the revenue record in the shape of a detailed village map/latha but in this case defendants have proved on record certified copy of the village map mark-D2 which does not depict existence of any such public passage at the spot. It appears that adjoining to the choe, some vacant land belonging to different owners is available which was being utilized by some of the villagers including some of the plaintiffs to go to their rooris. With the passage of time it may have become an undefined pagdandi. No village or public authority has declared it as public passage. No such

authority has determined its width to be 20' till date. No village map depicts this so called passage as a public passage. As such merely because plaintiffs are approaching their houses from this alternative passage in itself cannot be a reason to presume that it has become a public passage of a defined width. As already noted, once with the raising of construction in this passage, it has been obliterated, thus making it impossible to use, primarily because of difference in gradient, how the plaintiffs kept going to their houses and rooris has also not been explained. It clearly depicts that their houses and rooris must have been provided with alternative passage from the other side of the village and as per the defendants a passage from the side of village Gurudwara leads to their houses, as otherwise absence of an alternative passage would have made it impossible for the plaintiffs to reach their own properties.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon’ble Supreme Court in **Naryanan Rajendran and**

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**another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286 and
Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

20.2.2017
Ak Sharma

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