

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

**RSA No.606 of 2016 (O&M)
Date of Order: 29.08.2017**

Nirmala Yadav

..Appellant

Versus

Shakuntla and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Monika Arora, Advocate, for
Mr. Pritam Saini, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

Defendant no.2 is in regular second appeal against the judgment passed by the learned Additional District Judge, Rewari, dated 21.07.2015.

Plaintiff had filed a suit claiming that there is 20 feet wide passage, which the defendants are trying to encroach upon. It was further pleaded that the defendants have wrongly included the passage in the sale deed dated 20.09.2004. The plaintiff also prayed for mandatory and permanent injunction.

Learned Additional District Judge, Rewari, after examining the sale deeds dated 03.06.1997 and 20.09.2004, recorded a findings of fact that 20 feet wide passage exists on the northern side and the defendants have unauthorizedly encroached upon the same. With these findings, learned Additional District Judge ordered that the defendants shall remove the wall constructed in the disputed rasta and shall restore the passage to its original position within two months from the preparation of the certified copy of the

judgment.

Learned counsel for the appellant has argued that the plaintiff was not claiming ownership over the passage. The dispute whether the passage vests with the Gram Panchayat or not can only be decided in the proceedings under the Punjab Village Common Lands (Regulation) Act, 1961.

I have considered the submission of learned counsel for the appellant.

It is not in dispute that Ram Avtar sold land measuring 660 square yards to one Mahender Singh son of Sukh Ram. In that sale deed, it was clearly mentioned that on the northern side of the plot, there is 20 feet wide passage. Thereafter, Mahender Singh, the purchaser of the first sale deed, sold 320 square yards plot to Mahipal son of Bane Singh, husband of defendant no.1. In that sale deed, although, passage has been shown to be 20 feet wide, however, Mahender Singh, the purchaser of the first sale deed, has been shown to be owner of the passage also and that is how the 20 feet wide passage has been claimed by the defendant-appellant.

In view of these two sale deeds, it is apparent that there is a 20 feet wide passage situated in the northern side of the plot. Mahender Singh did not get ownership of the passage from Ram Avtar, therefore, Mahender Singh could not transfer the ownership of the 20 feet wide passage to the defendants. Once the vendor of the defendant was not owner of the passage he could not pass on title with reference to land under passage in favour of the defendant. "No one can transfer a better title than himself."

Learned counsel for the appellant has further submitted that such dispute can only be decided by the Collector under the Punjab Village

Common Lands (Regulation) Act, 1961.

I have considered the submission of learned counsel for the appellant.

In the present case, dispute is with regard to a passage for common use. There is no dispute with regard to title of the property. The land is situated within “abadi deh lal dora”. The passage always vests with the Gram Panchayat. In the present case, the Gram Panchayat is not a party. The case of the plaintiff is simply that it is a common passage and defendants should be directed to remove the encroachment therefrom. Therefore, jurisdiction of the Civil Court cannot be held to be barred.

For the reasons stated above, I do not find any good ground to interfere with the findings arrived at by the learned Additional District Judge, Rewari. The regular second appeal is ordered to be dismissed.

August 29, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No