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

**RSA No.3892 of 2014 (O&M)
Decided on: 09.08.2017**

Sarjeet Singh

.....Appellant

versus

Ram Phool and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Babbar Bhan, Advocate
for Mr. Vinod S.Bhardwaj, Advocate
for the appellant.

Mr. Mohit, Advocate
for Mr. R.A.Sheoran, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This is an appeal filed by the defendant against the concurrent judgments and decrees passed by the Courts below whereby the suit was decreed in favour of the present respondents/plaintiff and thereafter, the appeal filed by the present appellant was also dismissed.
2. The brief facts as mentioned in the judgment of the lower Appellate Court are that the present respondent/plaintiff (hereinafter referred as 'plaintiff') had filed a suit for permanent injunction against the present appellant/defendant (hereinafter referred as 'defendant'). Praying for injunction restraining the defendant from interfering in the passage or uprooting the bricks laid in the passage or in any manner closing the passage or create obstruction in the usage thereof. It was pleaded by

the plaintiff that the disputed passage was situated within the *Abadi* of village Dhani Chang and is a closed passage which is being used by the plaintiff for the last 60 years, i.e., since the time, he constructed his house at that place. It was pleaded that the defendant had no concern with the disputed passage but he was bent upon interfering in the usage of the same by the plaintiff by throwing garbage in that passage, by tethering his cattle and by encroaching upon the land of the passage. It was further pleaded that earlier the defendant had filed a suit and got that suit decreed on 07.04.1992 by showing a wrong site plan to the Court. Therefore, it was claimed that the defendant has no right, title or interest qua the passage.

3. Upon notice the defendant had filed written statement and besides taking ordinary preliminary objections had pleaded on merits that the land, which is claimed to be a passage by the plaintiff is, in fact, his ancestral property. It was pleaded that he and his forefathers have been in possession of the land in dispute since the inception of the village. It was further pleaded that the plaintiff and one Ram Singh had filed several false suits claiming the land to be a passage. It was further pleaded that the site plan filed by the plaintiff was not as per the factual position on the spot. The plaintiff has filed the present suit in order to support Ram Singh in his litigation and to harm the defendant. No such passage has ever been in existence at any point of time. The above said Ram Singh and his forefathers had no land adjoining the land of the defendant except a small piece of land measuring 4' X 10' which has already been left on the spot. There is

no *gali* or *rasta* on the spot as claimed by the plaintiff towards the said land measuring 4' X 10'. It was further pleaded that nobody has used the disputed passage as passage. Rather the defendant is using the same for putting garbage, collecting wood and parking his agricultural equipment i.e. tractor, trollies, etc. It was pleaded that the defendant has raised a wall by placing the bricks which is 27" towards the south of the disputed street. It was further pleaded by the defendant that Lalji, the grandfather of the Ram Singh had four sons namely, Bharat Singh, Rohtash, Ugarsain and Padam Singh. Lalji had taken the land in exchange from Mehtab Singh and constructed his residential house and he lived in that house along with his four sons throughout his life. After his death, his sons continued to be the owner in possession of the said house. Lalji had opened the door towards the land of the defendants by leaving the above said space of 4' X 10' which is their private *rasta* and which meets the *gali sareeam* towards the South. It was further pleaded that Ram Singh had deliberately shown closed street in the suit and similarly plaintiff has shown the disputed passage towards the West of his house. The house of the defendant is situated towards the East of the land which was left vacant. This position is continuing since 1933. It was further claimed that Rugha and Jagroop are cousins who are brothers of above said Mehtab Singh. Rugha and his brother, Jagroop and his brothers were earlier living together but thereafter they separated and effected a partition. Therefore, on their asking Mehtab Singh, father of the defendant, permitted the plaintiffs to use the land of defendant for ingress or outgress. It was claimed

that there is no passage on the spot, rather, the plaintiff is using this land with their consent. Now, with a malafide intention he wants to get the suit land declared as a passage; by disputing its status. Still further it was pleaded that in 1993, Trishpal Singh adopted son of Sheodan had filed a suit against the defendant and his father Mehtab Singh, wherein, he described the suit land as towards East of above said land measuring 4' X 10. The suit was contested by the defendant, therefore, the same was dismissed on 09.12.1999 and the appeal was also dismissed. Hence, it was pleaded that the suit land is not a passage. Rather it is ancestral land of the defendant over which he had stored bricks and is also throwing garbage, tethering his cattle and is parking his agricultural equipments.

4. Parties led their respective evidence.

5. After hearing the parties and appreciating the evidence, the Trial Court decreed the suit and the defendant was restrained from interfering in the use of the suit land as passage by the plaintiff and from obstructing the disputed passage in any manner. Aggrieved of the judgment and decree passed by the Trial Court, the defendant filed an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the defendant. While dismissing the appeal filed by the defendant the lower Appellate Court held that the plaintiff has examined himself as PW1 and examined PW2, Bijender Singh to prove his claim that the suit land is a passage. The Court further held that in the previous litigation, the defendant has admitted existence of passage on the spot. The lower Appellate Court relied upon Ex.P2, copy of the plaint

of the previous litigation and Ex.P5; copy of the judgment passed in that suit. It was recorded by the lower Appellate Court that this decree was suffered by the father of the defendant-Mehtab Singh in favour of the defendant and pertains *Gher* of the defendant adjacent to the land of the plaintiff. In the plaint of the said suit the defendant himself admitted that there is a *rasta sareeam* towards West. It was further recorded that boundaries as shown in the site plan, Ex.P1, filed by the plaintiff, tallied with the boundaries described in the plaint Ex.P2. In view of this, the lower Appellate Court held that even though the plaintiff was not a party in that litigation, however, the pleading and the judgment passed in that previous litigation between the defendant and his father itself shows the existence of the passage in question over the suit land. Hence, the lower Appellate Court did not find any merit in the appeal filed by the defendant. Aggrieved of that judgment and decree passed by the lower Appellate Court, the present appeal has been filed by the defendant.

6. While arguing the matter, learned counsel for the appellant has argued that there are inconsistencies in the statements of the witnesses examined by the plaintiff. Still further it is argued that the previous litigation within the family members of the defendant cannot be used by the plaintiff to seek a decree against the defendant. Hence, it is argued by the counsel that the judgment and decree passed by the Courts below are perverse.

7. Having heard learned counsel for the appellant and perusing the file, this Court is of the considered view that the arguments raised by the learned counsel for the appellant are not sustainable in law. Merely

because there are some irrelevant, inconsistencies in the statements of the witnesses do not call for rejection of their statements in its entirety. However, a bare reading of the statements make it clear that the plaintiff has succeeded in proving his case regarding the existence of passage on the suit land. Even otherwise, in the previous litigation, although the same was between the defendant and his father, it is admitted that there exists passage on the suit land. A judgment and decree regarding a public passage is relevant under Section 42 of the Indian Evidence Act in any suit relating to that passage. Therefore, the lower Appellate Court has not committed any illegality or perversity in recording the finding that merely because the plaintiff was not a party in that litigation; cannot prevent him from showing to Court, that from the pleadings of the defendant and his family members itself the existence of the passage over the suit land stands proved. Hence, there is no illegality, irregularity or perversity in the judgment and decree passed by the Courts below.

8.No other argument was raised by the learned counsel for the appellant.

9. In view of the above, the present appeal is dismissed being devoid of any merits.

9th August, 2017
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[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes