

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.1943 of 2017(O&M)

Date of Decision:-03.07.2017

Jeet Singh & Anr.

.....Appellants.

Versus

Nachhatar Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. S.S. Sahu, Advocate for the Appellants.

JASWANT SINGH, J. (ORAL)

Defendants/appellants are in second appeal aggrieved against the concurrent findings returned by the Courts below whereby suit for permanent injunction filed by the plaintiffs/respondents was decreed vide judgment and decree dated 30.04.2014 and findings thereof were affirmed by learned District Judge, Fatehabad vide judgment and decree dated 02.03.2017.

Learned Counsel for the appellants has argued that the findings returned by the Courts below are based upon wrong appreciation of the evidence led on record especially when it is proved that the passage in question has not been in existence for the past 20 years as alleged by the plaintiffs. It has been further argued that the jamabandi for the year 2008-09 has relied upon by the respondents/plaintiffs as well as the Courts below is a result of fraud as there was connivance between the plaintiffs and the

revenue officials and, therefore, the reliance placed by the Courts below on the said jamabandi by holding that a rasta was in existence is wrong and liable to be set aside.

After hearing learned Counsel for the appellants and perusing the paper book, this Court is of the opinion that the present second appeal is devoid of merit and deserves to be dismissed.

It is apparent from the record that the controversy involved is whether there is a passage measuring 12 marlas going through Khasra No.33//8 min and 33//9 min as alleged by the plaintiffs or not. A perusal of the jamabandi for the year 2008-09 Ex.P-1 shows that there is a *Gair Mumkin* which has been depicted in the aforementioned Khasra numbers and duly supports the case of the plaintiff. A presumption of truth is attached to the said revenue entries under Section 44 of the Punjab Land Revenue Act. The assertion made by the appellants that there was no rasta in existence and jamabandi for the year 2008-09 is a result of fraud in the light of Local Commissioner report also falls flat in view of the categorical observation of the Local Commissioner that there seems to be passage which has been freshly ploughed and the level of the land comprising aforementioned Khasra numbers was slightly higher than the level of the adjoining land. This report completely demolishes the case of the appellants and gains more significance in view of the fact that vide order dated 10.12.2014, the defendants were held guilty under Order 39 Rule 2-A CPC.

In view of the aforementioned facts there remains no doubt in the mind of this court that there was a passage in existence and thus, the findings returned by both the Courts below are justified and are hereby upheld and resultantly the present second appeal is hereby dismissed being

bereft of merit.

(JASWANT SINGH)
JUDGE

July 03, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>