

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4023 of 2017(O&M)

Date of Decision: 17.11.2017

Brij Mohan

... Appellant

Versus

Sunita & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Girotra, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

The Municipal Committee Sampla was defendant No.7 in the suit brought by the plaintiff-appellant disputing on a rasta/path. The stand of the committee was that the land claimed to be rasta was not Gali Share-Aam or public rasta. No clear and positive evidence was produced by the plaintiff even from the boundaries of the three sale deeds in question of properties converging to the gali to help him secure a decree of permanent injunction and declaration that the sale deed executed by defendant No.3- Kamla Devi in favour of defendant No.1-Sunita was illegal, null and void transaction. The dispute is of construction of a wall in front of the gate of the plaintiff's house towards western side.

The application made to the Executive Magistrate, Rohtak, to resolve the issue, was dismissed on the ground that the matter is of a civil nature and the Civil Court has jurisdiction over the subject matter. The Courts below have placed no faith on the plea that defendant no.3 sold Rasta Share-Aam to defendant No.1 vide sale dated 27.06.2011. The other sale deeds are of years 1993 and two of 2005. Civil Judge (Junior Division), Rohtak, in her

judgment dated 15.4.2014 has taken the view that Ex.P-2 read with Ex.P-3 i.e. sale deeds of 8.12.2005 and 31.8.2005 are not sufficient material to prove the existence of Gali Share-Aam, which is on the western side of the house of the plaintiff, in the absence of record in the Municipal Corporation regarding the existence of street in question. The trial Court has observed that the plaintiff made no effort to seek relief of appointment of a Local Commissioner by an application to Court to demarcate the suit property and therefore, the evidence of the plaintiff is hazy for a Court to grant relief prayed and to the contrary have rightly declined relief. When two Courts have returned findings against the plaintiff who are closest to the facts, I have no reason to interfere in those findings under Section 100 of the CPC or Section 41 of the Punjab Courts' Act, 1918 when they are not erroneous or a result of misreading of evidence or ignoring relevant material. For predominance of the 1918 Act in the territories of Punjab & Haryana, over and above jurisdiction over Section 100 of the Code; see, law stated by the Supreme Court in *Pankajakshi (D) through LRs. & others vs. Chandrika & Others.*, (2016) 4 SCC 68 : AIR 2016 SC 1169.

As a result, the appeal is found devoid of merit and the same is hereby ordered to be dismissed.

17.11.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No