

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

RSA No.609 of 2017
Date of decision : 02.08.2017

Ranjit Kaur

...Appellant

Versus

Swaran Kaur (deceased) through her LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raman Mohinder Sharma, Advocate for the appellant.

ANIL KSHETARPAL, J.

The plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for permanent injunction restraining the defendants from making encroachment by way of construction or otherwise over any part of passage/street 15 to 20 feet wide. The plaintiff had claimed that she does not have any other passage.

The defendants contested the suit and pleaded that the house of the plaintiff is situated at Nabha-Amloh main Road, the entrance of the plaintiff is from the said road. The defendants also pleaded that there is no street on the back of the house of the plaintiff. It is further pleaded by defendants that the plaintiff had sold the plot to the defendants.

The learned trial Court after appreciating the evidence available on the file has found that the house of the plaintiff is situated on the main

road and, therefore, the plaintiff was factually incorrect in taking the plea that no passage to the house of the plaintiff is available. The learned trial Court further found that no passage is leading up to the house of the plaintiff on the back side as front of the house of the plaintiff is located on Nabha-Amloh road. With these findings, the learned trial Court dismissed the suit filed by the plaintiff.

The first appeal preferred by the plaintiff was also dismissed after re-appreciating the evidence. The learned First Appellate Court framed two questions and thereafter thoroughly discussed the evidence led by the parties. The learned First Appellate Court has held that there is no passage on the back side of the house of the plaintiff as claimed by him which leads to her house. In these circumstances, appeal filed by the plaintiff has been dismissed.

Learned counsel for the appellant has referred me to the site plan wherein a gate has been shown by the plaintiff opening towards backside. He has submitted that since gate is in existence, therefore, it must be assumed that street is in existence.

I have gone through the judgment passed by the First Appellate Court. Even First Appellate Court has found that gate is in existence. However, learned First Appellate Court has said that merely because gate has been opened in the property of someone, that would not prove the existence of the street. In this case, the plaintiff has failed to lead any evidence to prove the existence of the street. In fact, the stand taken by the plaintiff that there is no passage available to the plaintiff stands falsified by this layout plan itself. The layout plan clearly shows that the house of the

plaintiff is situated at Nabha-Amlloh Road.

Counsel for the appellant has not been able to point out any misreading of evidence or non-reading of evidence available on the file. Learned counsel has further not been able to point out any impeachable evidence to prove the existence of a street. Had there been any street, it would have been clearly shown in the *Aks Sajra* maintained by the Revenue Authorities. Taking into consideration the concurrent findings of fact arrived at by the Courts below, I do not find any reason to interfere in the judgment passed by the Court.

The appellant has not been able to point out any substantial questions of law involved in the present appeal. Counsel has failed to put-forth any ground for interference in terms of Section 41 of the Punjab Courts Act, 1918. Hence, the present Regular Second Appeal is dismissed.

02.08.2017

Pawan

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No