

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

CR-6902-2015 (O&M)

Date of decision : 24.01.2018

Jagjeet Singh

..... Petitioner

Versus

Geja Singh and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Deepak Kaushal, Advocate for the petitioner.

Mr. Shoaib Khan, Advocate for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 17.7.2015 (Annexure P-5) passed by learned Additional Judge, Sirsa, affirming the order dated 11.5.2015 (Annexure P-4) passed by learned Civil Judge (Senior Division), Dabwali, Sirsa, vide which application during the pendency of the suit filed under Order 39 Rules 1 and 2 read with Section 151 CPC, 1908 was dismissed.

Heard.

Petitioner-plaintiff has filed the suit for declaration that there is a passage measuring 2 *karams* x 72 *karams* through the land comprised in *Khewat No. 806, Khatoni No. 1043, Rectangle No. 160 Killa No. 8/1/2 (0-8), 13/2 (7-12)* on its Eastern side, for last more than 20 years; plaintiff has

acquired the right of easement by way of prescription and the revenue entries to be contrary are to be ignored. Consequently, injunction was also sought for restraining the defendants from blocking the passage.

It comes out that petitioner-plaintiff has purchased 1/3 share in the land measuring *48 kanals* equal to *16 kanals* from one Geja Singh vide sale deed dated 29.11.1996. Before that there was an agreement to sell (Annexure P-3) dated 27.5.1996. A perusal of the sale deed shows that only 1/3 share equal to *16 kanal* out of land measuring *48 kanal*, mentioning said sale deed was purchased and no specific portion was purchased. There is a mentioning sale deed that the sale deed is along with the right of way; water course canal; canal water etc., and possession has been delivered to the vendees. The plaintiff claims the passage in adjoining land on the Eastern side bearing *Khasra No. 812 and 132712* on the basis of easementary rights for more than 20 years. The share in the land was purchased in the year 1996. The suit was filed in the year 2014. In this way, the period of 20 years has not elapsed. Moreover, plaintiff is required to lead evidence to prove the existence of the passage and the fact that he has been using the same.

There are concurrent findings of two Courts below that from its face, no prima facie case is made out. Balance of convenience is also against the plaintiff. Therefore, injunction was rightly declined vide order 17.7.2015 (Annexure P-5) passed by learned Additional Judge, Sirsa, affirming the order dated 11.5.2015 (Annexure P-4) passed by learned Civil Judge (Senior Division), Dabwali, Sirsa.

So far as factum of sale by defendant-Surjit Kaur, during the pendency of the suit is concerned, she has already been made party and is

now represented by her LRs and needless to say that any decree, if passed, shall also be binding on her.

Consequently, present revision petition is dismissed with above said observation.

24.01.2018

preeti

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable:	No