

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

**RSA No.3205 of 2011 (O&M)
Date of Order: 09.05.2018**

Kulwant Singh

..Appellant

Versus

Amar Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.M.Sharma, Advocate,
for the appellant.

Mr. R.V.S.Chugh, Advocate,
for the respondents

ANIL KSHETARPAL, J(Oral)

Defendant no.2-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the court below.

Plaintiff and defendants jointly purchased a piece of land vide sale deed dated 29.07.1974. Thereafter, brothers partitioned the property and constructed their respective houses. Plaintiff filed a suit for permanent injunction asserting that the defendants are trying to encroach upon the street. However, later on the suit was amended and prayer for mandatory injunction was added as the defendants in the meantime encroached upon the street.

In the written statement, defendants claimed that there is no street on the Eastern side and in partition whatever property fell into the share of defendant no.1, he had sold the property in favour of defendant no.2.

After appreciation of the evidence available on the record,

learned trial court as well as the learned first appellate court decreed the suit and held that there was a 10 feet wide street on the Eastern side of the property and defendants have encroached upon the same.

On 06.04.2018, this court had heard the arguments, however, since counsel for the appellant was relying upon Exhibits D2 and D3 i.e. the municipal record, therefore, record of the trial court was summoned.

On examination of the record, it is apparent that along with the sale deed dated 29.07.1974, through which defendant no.1 and the plaintiff had purchased the property, on the Eastern side, 10 feet wide street was depicted. Plaintiff's case is only to enforce that right.

Defendants no.1 and 2 are bound by the aforesaid sale deed because they have deriving their title from the aforesaid registered sale deed. Therefore, defendants are now estopped from contesting the fact that the street on the Eastern side which is 10 feet wide does not exist.

Exhibits D2 and D3 are only communications by Municipal Committee that the sewerage line has been laid and pavement of the street has been carried out to a certain extent, however, these document does prove that no street exist.

In view of the aforesaid, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

May 09, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No