

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

RSA No.983 of 2011 (O&M)

Date of decision : 20.11.2018

Tarsem Singh

...Appellant

Versus

Mukesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Bansal, Advocate for the appellant.

Mr. K.S. Dadwal, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

On the previous date of hearing, learned counsel for the appellant had brought to the notice of this Court that in a subsequent litigation with Surjit Singh i.e. Civil Suit No.320 of 2009, a joint written statement has been filed by the appellant as well as respondents admitting the agreement dated 15.02.1999, according to which, the existence of passage as per the agreement is admitted. A certified copy of the written statement has been filed today in the Court which is taken on record and marked as Mark "C". Para 3 of the aforesaid written statement is extracted as under:-

"3. That in reply to this para, it is submitted that there was a family settlement dated 19.8.1977 in between plaintiff, defendant No.1 and their other brother-Balbir Singh, with the consent of their father-Jai Singh and two karam vide passage was left for the house of the defendant No.1. Then

there was another agreement in between plaintiff and defendant No.1 dated 2.6.1981. Not only this the plaintiff inspite of the abovesaid agreements filed a civil suit earlier and claimed the passage in dispute as part of his house. But the plaintiff could not get the temporary injunction from the Court and his application for temporary injunction was dismissed. The copy of order is attached herewith. The plaintiff then withdraw the said suit and the same was dismissed as withdrawn. The copies of the orders of the Court and the copy of plaint and written statement are attached herewith. Not only this there was yet another agreement dated 15.2.1999 in between defendant No.1, plaintiff, defendant No.2, as guardian of Sukhbir Singh son of Sh. Tarsem Singh-defendant No.1. None of the parties to the said agreement have got any right to throw water in the passage. The situation of the passage has been correctly shown in the site plan of earlier litigation in between defendant No.1 and defendants No.4 to 6, the copy of the same is attached herewith. The plaintiff himself has encroached the part of the passage in dispute. This passage is to the south of khasra No.71//24/1/1 owned by Sukhbir Singh and is to the north of plaintiff. It bifurcates from the main road and leads to the house of defendant No.1. The plaintiff cannot encroach any part of the same. Even in other litigation in between defendant No.1 and defendant No.4 to 6 the situation and existence of passage has already been upheld. No water can flow in the rasta. Though the water of tubewell could pass as per agreement dated 2.6.1981 but the position stood changed as per agreement dated 15.2.1999. Moreover, when the plaintiff has already disposed off his whole of the land then he has left with no right to pass water through the passage in question. Even there is no tubewell of the plaintiff. The plaintiff just wants

to obstruct the user of Rasta by the defendants by filing this false suit and by illegally throwing dirty water of his house in the said passage. This is not out of place to mention here that the said passage is the only approach for the house of defendant No.1. The plaintiff malafide wants to obstruct the user of the same, by defendants. The defendant No.3 has nothing to do with the passage in dispute. He has malafide been impleaded as a party.”

Learned counsel for the respondents, in view of the aforesaid written statement, does not dispute that findings of the First Appellate Court are required to be set aside and the judgment passed by the learned trial Court is required to be restored.

Hence, the appeal shall stands allowed and the decree for permanent injunction as was passed by the trial Court shall stand restored and the judgment and decree passed by the First Appellate Court shall stand set aside.

20.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No