

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

RSA No.2001 of 2016 (O&M)

Date of decision: 05.07.2018

Udham and another

..... Appellants

Versus

Satpal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- None.

ANIL KSHETARPAL, J. (ORAL)

Called twice, however, counsel for the appellants has not come present. On 31.07.2017, counsel for the appellants was also not present. Even on 08.12.2016 and 01.06.2017, the case was adjourned on the request of learned counsel for the appellants. In these circumstances, this Court cannot keep the appeal pending in this manner. Hence, this Court proceeds to decide the appeal on merits.

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit for permanent injunction restraining the defendants from interfering into the peaceful use and occupation of a street located on western side of the house of the plaintiff. It was claimed that this street is being used for the last 40 years. The defendants contested the suit and pleaded that there was no street and the property is a part of the property of the defendants. During the pendency of the suit, a Local Commissioner was appointed namely Sh. Gajender, Advocate who after

surveying the area has submitted a report that there is a street and the plaintiff has an opening towards the aforesaid street and is being used by them. Both the Courts on appreciation of evidence has found that since the land is situated within the village abadi, therefore, there is no record of the street but the area which has been left out is no doubt being used for passage. The Court has also noticed that rainy and waste water of the respective house is being discharged towards this street.

This Court has also examined the grounds of appeal, however, neither any substantive misreading of evidence has been pointed out nor any perversity has been shown.

Learned counsel for the appellants has proposed the following substantial questions of law:-

“(i) Whether without any evidence claiming the rasta from the property of the defendant on the basis of local commissioner report is legal?”

(ii) Whether the Naksha-Paemais of village is sufficient to prove the rasta of Gram Panchayat?

(iii) Whether without informing to the defendant by local commissioner at the time of spot inspection, the report submitted by him is legal?”

Question No.1 is not a question of law. In any case, this fact has already been discussed by the Court. With regard to question No.2, it will be appropriate to observe that both the Courts below have held that it is a private street which has been left by the residents of the surrounding area and is being used. With regard to third question, it will be noted that a Local Commissioner is appointed to carry out spot inspection/survey. In the present case, the Local Commissioner visited the spot and surveyed the area and submitted a report. Prior intimation to the defendant/other party

would sometime result in frustrating the entire purpose of appointment of Local Commissioner to carry out the survey. In such circumstances, it is not mandatory that before visit, Local Commissioner must inform the other side.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

05.07.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No