

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

RSA No.275 of 2016
Date of decision: 14.05.2018

Darshan Singh

... Appellant

Versus

Guranditta Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sukhdip Singh Brar, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 27.08.2014. As even the appeal preferred against the said decree failed and was dismissed on 01.09.2015, appellant-defendant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for injunction restraining the defendants from demolishing the path/pahi, comprised in khewat No.33, khatoni No.95, rect. No.48, killa No.4(0-14), situated in the revenue estate of village Aulakh, which leads to the tubewell of the plaintiff, and also from causing any obstruction in its usage and enjoyment by the plaintiff. Briefly, the case of the plaintiff has been that one Bakhtour Singh and the defendant were co-sharers in the suit land. On 07.02.1984, Bakhtour Singh by way of

an exchange gave a path/pahi, measuring 14 marlas, comprised in rect. No.48, killa No.4 to the plaintiff to approach his tubewell, and in lieu thereof Bakhtour Singh was given a piece of land for construction of a water course. The land of the plaintiff was situated ahead of the land of Bakhtour Singh as also the path/pahi in question. And from the date of exchange, the plaintiff has been using the said pahi to approach his tubewell. But now as the land of Bakhtour Singh and the defendants had been partitioned, and mutation No.4027 was entered in this regard, killa No.4 of rect. No.48 had since fallen to the share of the defendants. The records show that only an area measuring 7 kanals 6 marlas was allotted or had fallen to the share of the defendants and the remaining land was shown as pahi. Even an entry in this regard was marked in the khasra girdawari showing the gair mumkin pahi. However, the defendants were now trying to demolish the path/pahi and to cause obstructions in its usage. Thus, the suit.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that indisputably the defendants were the owner of the area comprised in khasra No.4 of musteel No.48. However, an area measuring 14 marlas comprised in the said khasra was being used as passage/pahi by the plaintiff for ingress and outgress to his tubewell. For a land measuring 14 marlas was exchanged by Bakhtour Singh in the year 1984 with the plaintiff and in lieu thereof he too received some area for construction of a water course. The pahi/passage was proved to be in existence. Undoubtedly, in the jamabandi for the year 2007-08, the defendants were shown to be the owner of khasra No.4. However, out of total area measuring 8 kanals comprised therein, a land measuring 7 kanals 6 marlas was shown to be irrigated by canal water and the rest 14 marlas were

shown to be gair mumkin. Similarly, even in khasra girdawari Ex.P3, out of the total land measuring 8 kanals, comprised in khasra No.4, 14 marlas were shown to be gair mumkin pahi. The photographs Ex.P4/A to Ex.P4/H duly proved that a passage was in existence and running at the spot. The said position was equally substantiated even by the report furnished by the Local Commissioner Ex.PX. Even though the girdawari as regards khasra No.4 of musteel No.48 was corrected in the year 2008, pursuant to the order dated 14.06.2007 (Ex.D10) passed by the Naib Tehsildar, but the disputed passage/pahi continued to be shown even in the subsequent girdawaries to date. Further, even Suresh Kumar Draftsman (PW3) duly proved the site plan Ex.PW3/A, which showed the existence of the disputed passage/pahi. No doubt, nothing was brought on record by the plaintiff to prove that he had actually parted with some land by way of exchange in favour of Bakhtour Singh. However, Bakhtour Singh (PW2) specifically stated in his examination-in-chief that he had left the passage from khasra No.4 to be used by the plaintiff and in lieu thereof, he had received a piece of land for construction of a water course for irrigating his fields. Thus, it was recorded that although the defendants were proved to be the owner of khasra No.4 of musteel No.48, but it was also proved that a passage/pahi, measuring 14 marlas, also existed in khasra No.4. Therefore, as the said passage was running at site for many years, and was being used by the plaintiff, it could not be demolished by the defendants unlawfully except with due process of law. On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

14.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO