

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

RSA No. 3729 of 2016 (O&M)

Date of decision : September 25, 2018

Paramjit Saini

.....Appellant

Versus

Saroj Narang and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Pritam Saini, Advocate for
Ms. Monika Arora, Advocate
for the appellant.

Mr. D.K. Tuteja, Advocate
for the caveator/respondent.

LISA GILL, J.

Appellant – defendant is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Senior Division), Rohtak vide judgment and decree dated 26.04.2014 as well as learned Additional District Judge, Rohtak vide judgment and decree dated 06.02.2016.

Brief facts are that respondent No .1 – plaintiff filed a suit for permanent injunction against the present appellant as well as respondents No. 2 to 4 seeking to restrain the present appellant from blocking the entry of common passage, six feet wide, falling towards North side of the property of the plaintiff and defendants No. 2 to 4 as well as restraining him from amalgamating this street with his property or raising any fixtures or construction thereon or for preventing the appellant and defendants No. 2 to 4 from using passage for ingress and egress.

It was pleaded that the plaintiff as well as the proforma defendants No. 2 to 4 were owners in possession of the suit property by

virtue of a sale deed executed in their favour on 18.10.1999. Defendant – appellant No. 1, it was stated, without any legal right, title or interest claimed himself to be the owner of the property situated towards North side after six feet wide common street (gali). It was further pleaded that defendant – appellant threatened the plaintiff and defendants No. 2 to 4 to amalgamate the common street with his property and raise construction thereon, preventing them of the use of the common passage for ingress and egress to their plot. Hence, the suit filed.

Appellant – defendant No. 1 resisted the suit. Written statement was filed taking preliminary objections. Averments on merits were controverted. It was stated that the passage in question is not common with the plaintiff but private property of defendant No. 1 – appellant alongwith his family members namely Ashok Kumar, Sukhbir Singh and Dalbir Singh. Predecessor- in – interest of the plaintiff namely Subhash (real brother of the appellant) had no right in the common passage. It was claimed that the alleged plot came to the share of Subhash in Civil Suit No. 339 dated 03.03.1998 decided on 28.09.1988 by the learned Additional Senior Sub Judge, Rohtak. The plot, which was sold to the plaintiff by Subhash, was accessible through the main street and he had no right, title or interest in the common passage. Therefore, defendant No. 1 i.e. the present appellant, it was stated, had every right to prevent the plaintiff and her co-sharers from entering upon the private property including the street. Dismissal of the suit was prayed for.

Defendants No. 2 to 4 in the present appeal did not appear and were proceeded against exparte. Replication was filed.

Following issues were framed by the learned trial Court on the

basis of the pleading:-

- i) Whether the plaintiff is entitled to decree for permanent injunction on the grounds mentioned in the plaint?OPP.
- ii)Whether the plaintiff is entitled to decree for mandatory injunction on the grounds as averred in the plaint?OPP
- iii)Whether suit is not maintainable in the present form? OPD.
- iv)Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.
- v) Whether this Court has got no jurisdiction to try and entertain the present suit?OPD
- vi)Whether the suit is bad for non joinder and misjoinder of necessary parties?OPD
- vii)Relief.

Evidence was led by the plaintiff and defendant No. 1.

Learned trial Court on considering the facts and circumstances of the case decreed the suit of the plaintiff. Appellant was restrained from interfering in the right of the plaintiff and proforma defendants regarding use of the common passage. Appeal filed by the appellant was dismissed by the learned Additional District Judge, Rohtak vide judgment dated 06.02.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the common street in question is in fact the private property of the appellant. The fact that it is being used as a passage by the defendant and his brothers does not in any manner entitle respondent No. 1 – plaintiff to use the passage. It is argued that the said common passage was carved out of private land of the appellant and his brothers for their own use. Therefore, the plaintiff – respondent has no right to use the same. The compromise was effected between the appellant and his brothers i.e. all the sons of Laik Ram resulting in judgment and decree dated 28.09.1988. As per the said

compromise, six feet wide passage was left for the use of the parties to the suit. Sale deed dated 18.10.1999 (Ex.PW2/A) executed by Subhash, (real brother of the appellant) in favour of the plaintiff does not mention that share of the street has also been conveyed to the plaintiff. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 26.04.2014 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 06.02.2016 passed by the learned Additional District Judge, Rohtak be set aside.

Learned counsel for the respondent – caveator has, however, refuted the said averments while submitting that both the learned courts below have rendered well reasoned judgments, which call for no interference. Dismissal of the appeal is, thus, prayed for.

I have heard learned counsel for the parties and have perused the file as well as photocopy of the record, which was furnished by learned counsel for the appellant in Court today.

It is not in dispute that Laik Ram had five sons i.e. Dilbag Singh (father of the present appellant), Ashok Kumar, Sukhbir Singh, Dalbir Singh and Subhash Chander. A compromise had been arrived at between all the five brothers resulting in judgment and decree dated 28.09.1988. A copy of the said decree dated 28.09.1988 is on record. It is specifically mentioned in order dated 28.09.1988 that compromise Ex. C1 as well as site plans Exs. C2, C3 and C4 shall form part of the decree. Site plan (Ex.C4) with the compromise has been duly accepted in the present proceedings as well. A perusal of the site plan reveals the existence of a six feet wide passage on the North side of the property of Subhash, predecessor-in-interest of the plaintiff and abutting the Southern side of the property held by Ashok

Kumar, Sukhbir Singh, Dalbir Singh and Dilbagh (predecessor-in-interest of the appellant). I have also perused sale deed (Ex.PW2/A) executed by Subhash Chander in favour of the plaintiff. In the description of the property, it is clearly mentioned that to the north thereof there exists a six feet wide passage. It is, thus, apparent that in the compromise which culminated in the judgment and decree dated 28.09.1988 a six feet wide common passage was carved out/left for common use of the parties therein. Subhash brother of the appellant and the predecessor-in-interest of the plaintiff executed sale deed dated 18.10.1999 in favour of the plaintiff. It is apparent that the plaintiff has every right and entitlement to the use of common six feet wide passage.

Learned trial Court has, thus, rightly decreed the suit filed by the plaintiff – respondent. Learned Additional District Judge, Rohtak has rightly upheld the said verdict.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 26.04.2014 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 06.02.2016 passed by the learned Additional District Judge, Rohtak which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

September 25, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No