

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 5056 of 2016(O&M)

Date of Decision:29.10.2018

Avtar Singh

.....Appellant

Versus

Joga Singh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None for the appellant.

LISA GILL, J(Oral).

Appellant-plaintiff is aggrieved of judgment and decree dated 01.08.2015, passed by the learned Additional Civil Judge (Sr. Division), Rajpura, as well as judgment and decree dated 23.02.2016, passed by the learned Additional District Judge, Patiala, whereby suit for mandatory injunction filed by the appellant-plaintiff for directing the defendant-respondent to remove the encroachment from the passage as described in the plaint, was dismissed.

It was pleaded by the plaintiff-appellant that he was in possession of 3 Bighas of land as detailed in the plaint. As per agreement dated 05.01.1993, the said land was agreed to sold by the plaintiff to the defendant for a sum of ₹40,000/-. Possession thereof was given to the defendant. As per the said agreement, the defendant-respondent had left a passage of 4'9" (one Karam) from the *Phirni* (outer boundary of the village) to Gurdwara Sahib adjoining to land of Jaimal Singh for the plaintiff-appellant-Avtar Singh. Thereafter, the plaintiff as well as the other inhabitants were regularly using the said passage. However, the defendant, it was stated started encroaching upon the passage illegally and was threatening to encroach upon the other part of the passage as well in

violation of the terms and conditions of the agreement dated 05.01.1993.

Despite requests, defendant remained adamant. Hence this suit.

Suit was resisted by the defendant. It was stated that the plaintiff is a dishonest and mischievous person, who had received the price of 3 Bighas of land, but on the spot only 2 Bighas were received by the defendant. Plaintiff was stated to be a retired Patwari. Agreement dated 05.01.1993 in respect to 3 Bighas of land was admitted. Possession of One (1) Bigha of land for which he had already submitted the sale consideration, was demanded, but the appellant refused to hand-over the same. Defendant, it was stated remained ready and willing to get the sale deed executed, but the plaintiff did not come forward. Plaintiff was stated to be elected as Sarpanch about 7 years ago. Thereafter, he and his daughter-in-law paved the street for approaching Gurudwara Sahib. It was submitted that the plaintiff wanted to encroach upon the land of the defendant. Disputed land was never left as passage nor used by any inhabitant. The spot where the plaintiff was alleging passage, does not exist, rather there is the residential house of the defendant in the portion adjoining the wall of the Gurudwara Sahib. Dismissal of the suit was prayed for.

The learned trial Court dismissed the suit filed by the appellant-plaintiff while concluding that he had failed to prove on record sufficient, oral and documentary evidence. Reference is made to the testimony of PW-2 as well as the plaintiff himself wherein they have admitted in their cross-examination that there is only one gate of the Gurdwara Sahib and the same opens towards street and there is no gate towards the backside of the Gurudwara Sahib. PW-4-Satnam Singh, has admitted that the site plan Ex.P-

1 was never prepared by him after visiting the spot and it was so prepared on the instructions of the plaintiff. It was held by the learned trial Court that both the documents on the basis of which the plaintiff has filed the suit have not been proved on record. No complaint whatsoever, was moved by the plaintiff or any other villager regarding the alleged encroachment.

Appeal filed by the appellant-plaintiff was also dismissed by the learned Additional District Judge, Patiala, vide judgment and decree dated 23.02.2016.

The matter, it is noticed was adjourned on various occasions. Ultimately, on 03.08.2018, Mr. Ashish Bakshi, Advocate, appeared on behalf of the appellant while informing that Mr. R.S.Malhotra, Advocate, who had filed this appeal had passed away. The matter was adjourned on his request to 17.09.2018. None appeared on behalf of the appellant on 17.09.2018 and the matter was adjourned in the interest of justice for today i.e. 29.10.2018 while making it clear that no further opportunity shall be afforded for addressing arguments.

Today, again there is no representation on behalf of the appellant. It appears that the appellant is not interested in pursuing this matter any longer.

Appeal is accordingly dismissed in default.

29.10.2018
s.khan

[LISA GILL]
Judge

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