

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

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RSA No.5108 of 2016 (O & M)
Date of Decision:05.07.2018

Kuldip Singh

...Appellant

Versus

Paramjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Dispute between the parties is very small with regard to a passage. Originally khasra number was 95. Later on it was divided into three parts 95/1, 95/2 and 95/3. Land comprised in khasra No.95/2 is admittedly owned by the plaintiff whereas defendants No.1 and 2 claim to be owner of 95/1 measuring 10 marlas.

Plaintiffs filed a suit, claiming easement of necessity on the ground that inadvertently no passage has been provided to the owner of land comprised in khasra No.95/2. Plaintiffs also relied upon agreement signed by father of defendants No.1 and 2.

Both the Courts below after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs after returning a finding that the plaintiffs has an easementary right over the passage, which is being used.

Learned counsel for the appellant has argued that since defendant No.3-Gurdev Singh (father of defendants No.1 and 2) was not the owner, therefore, any agreement signed by Gurdev Singh shall not be binding on his sons. She submitted that the property in question i.e. 95/1 was purchased by defendants No.1 and 2 from Chanan Singh son of Batta Singh and, therefore, agreement signed by Gurdev Singh cannot bind upon the appellant.

This Court has considered the submission.

In the present case, learned trial Court has specifically recorded a finding that the plaintiffs has acquired a right of passage by way of easement of prescription and necessity. The aforesaid finding has been affirmed by the learned First Appellate Court.

Learned counsel for the appellant could not point out availability of other passage.

In these circumstances, there is no ground to interfere.

Regular second appeal is dismissed.

05.07.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No