

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3927 of 2015 (O&M)

Date of Decision: September 05, 2018

Khushi Ram

...Appellant

Versus

Gurnam and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sanjay Verma, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

This Regular Second Appeal has been filed by the defendant – appellant against the judgment of the Courts below, whereby, the suit of the plaintiff – respondent No.1 for permanent injunction for restraining the defendants from closing the passage/gali, interfering and encroaching upon the said passage/gali or making any construction, addition or alteration therein, has been decreed.

The case set up in the suit was that the plaintiff and defendants are residents of village Mandkheri Ki Tapriyan, Tehsil Jagadhri, District Yamuna Nagar. The case of the plaintiff was that in the site 'ABCD' in the site plan, attached to the plaint, there was a passage/ gali in the abadi, which was being used by the plaintiff and other inhabitants of the village from the time immemorial. The said passage joins the *gair mumkin rasta* bearing Khasra No.210, which is the main *rasta*. The plaintiff had moved an

application before the DC, Yamuna Nagar, which was forwarded to the Tehsildar and Halqa Patwari for report. The site was inspected and in the report dated 10.9.1996, it was stated that the passage in dispute runs in the Abadi, which adjoins the *gair mumkin rasta* of Khasra No.210. The case of the defendants was that the property in dispute was owned and possessed by defendant No.2 Khushi Ram. It was further their case that in the suit property, there was a residential house of defendant No.2. The existence of any passage or gali at the spot was denied.

The Municipal Council, Jagadhri was impleaded as defendant No.4, which stated that the ownership of the gali vested in the Municipal council and it was being used for common purposes by the local inhabitants of the locality. The Trial Court noted that Raghubir Singh, Clerk of Municipal Council, Jagadhri while appearing as DW1 has specifically deposed that the Municipal Council Jagadhri was owner of the suit property/gali in dispute, which was being used by all the villagers. He also deposed that the said passage/ gali exists at point 'ABCD' in the site plan Ex.P1. This statement of DW1 corroborated the statement of PW1 that the gali was being used by all the inhabitants of the village. The Trial Court noted that *Akash Sazra* Ex.P4 further depicted the existence of passage/gali leading to Khasra No.210. The report of the Patwari Ex.P6 also indicated the existence of the gali over the suit property. It was also noted that defendant No.2 Khushi Ram (appellant herein) admitted in his cross-examination that he had purchased some land from one Rulla Ram and no sale-deed was executed regarding that land and only an agreement was executed. Based on this evidence, the Trial Court concluded that there

existed a gali for the common use of the inhabitants of the village. The Ld. First Appellate Court affirmed the findings of the Trial Court.

Ld. Counsel for the appellant has not been able to establish as to how the findings of the Courts below are perverse or against the record.

No question of law arises for decision in the case.

Appeal dismissed.

September 05, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No