

RSA No. 5349 of 2016 (O&M)

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

**RSA No. 5349 of 2016 (O&M)
Date of decision: 9.5.2018**

Didar Singh

... Appellant

Versus

Pawan Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sudesh Sahi, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiffs was decreed by the trial court, vide judgment and decree dated 10.1.2014. As even the appeal preferred against the said decree failed, and was dismissed on 8.9.2015, defendant No.1 is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a decree for injunction, restraining defendants No.1 to 3 from causing any interference in their peaceful usage, enjoyment and existence of a passage in question, fully described in the site plan (Annexure P-1), measuring 5 marla.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that, in fact, the defendants had carved out a colony, by dividing their agricultural land, measuring 64K-7M, and had sold small sites/plots to various people. And, none other than

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defendant-Didar Singh (DW1), conceded, in his cross-examination, that he had sold plots to the plaintiffs. Though he sought to resile from his statement, but in the process conceded that there, indeed, exist a pahi, i.e. passage, near the plot that was sold (Ex. P-1). All the witnesses examined by the plaintiffs and sale deeds proved on record showed that defendant No.1 had sold small plots, along with passages, to different persons. The site plan (Ex. P-2), which was duly proved, also showed the existence of the pahi and passages, that leads to the property of different persons, who purchased plots out of a larger chunk measuring 64 kanal 7 marla. Thus, it was concluded that there, indeed, existed a passage measuring 5 marla, which was specifically left out to be used as such, and was transferred by the defendants to the plaintiffs. Therefore, even if, no such passage was shown to be in existence in the revenue record, that was in consequential. For it's existence and usage was duly proved. On being pointedly asked, learned counsel for the appellant could not show as to how, the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

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

9.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO