

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

**RSA No.6087 of 2016 (O&M)
Date of Decision.18.05.2018**

Sukhjit Singh and another

.....Appellants

Vs

Sammittar Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Malkeet Singh, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.16026-C of 2016

For the reasons stated in the application, delay of 6 days
in filing the appeal is condoned.

Application is allowed.

C.M. No.16027-C of 2016

For the reasons stated in the application, delay of 24 days
in filing the appeal is condoned.

Application is allowed.

RSA No.6087 of 2016

The appellants-plaintiffs are aggrieved of the concurrent
finding of fact whereby the suit seeking permanent injunction
restraining the defendants from encroachment and raising the
construction over the passage/kacha road bearing Khewat No.72,
Khatoni No.110, Khasra No.73/3-9, 76/1-14, 172/21-9, 200/12-2,
207/1-8, 216/2-1, 221/1-8 situated in village Chuharwal, Tehsil and
District Kapurthala has been dismissed by the trial Court and

affirmed by the lower Appellate Court.

The aforementioned suit was filed on the premise that the passage/kacha rasta in dispute was 33' in width and 198' in length which was used by the plaintiff, defendant and other inhabitants. There was no other passage. Defendants threatened to encroach upon the same, which gave cause of action to the plaintiff to file the aforementioned suit.

The aforementioned suit was contested by the defendants by raising the plea of maintainability and it was urged that the defendants have purchased share in the property vide agreement to sell dated 4.11.1999 executed by Teja Singh, Surain Singh son of Khushial Singh, Bhan Kaur, Nand Kaur, Atti daughters of Khushal Singh and Darshan Singh son of Bhagwan Singh, all residents of village Kanjli, Tehsil and District Kapurthala and paid entire sale consideration. The plaintiffs also did not disclose about the previous litigation i.e. Civil Suit bearing No.128 of 2004 filed by the defendants against Teja Singh regarding declaration of right which was pending adjudication whereas in the aforementioned previous suit, the plaintiffs in the present suit had already appeared and contested the same, therefore, the suit was not maintainable and liable to be dismissed, much less, barred under Section 10 of the CPC.

Since both the parties were at variance, the trial Court framed as many as six issues including the issue of relief. The plaintiffs examined as many as seven witnesses and brought on record certain documentary evidence whereas defendants also examined two witnesses and brought on record Ex.D1 to D4 i.e.

jamabadies and khasra gridawaries.

The trial Court on the preponderance of evidence dismissed the suit and the appeal preferred before the lower Appellate Court also met with the same fate.

Mr. Malkeet Singh, learned counsel appearing on behalf of the appellants submitted that the judgments and decrees under challenge are not sustainable in the eyes of law and suffer from illegality and perversity, for, the agreement to sell does not confer title, therefore, could not have been stated to be legal and authorized. On the other hand, the appellants-plaintiffs had proved the existence of the passage, for, during the pendency of the suit, the defendants had encroached upon the passage. Therefore, the Courts below could have moulded the relief as per Order 7 Rule 7 CPC.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Malkeet Singh. The essential documentary evidence in such type of suit was to be brought on record is the demarcation report. The same had not seen the light of the day. In the absence of such report, it could not be ascertained or deciphered whether there was encroachment upon the passage or not, much less, ownership of the Gram Panchayat or that of the defendants. The plaintiffs have miserably failed to discharge onus or seek amendment of the suit for mandatory injunction. Even amendment would not have help in the absence of direct or corroborative evidence.

In view of the aforementioned, the argument of Mr. Malkeet Singh has not been able to cut ice to enable this Court to

form a different opinion than the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 18, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No