

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

**RSA-4908-2015 (O&M)
Date of Decision: May 23, 2018**

Himmat Singh and another

...Appellants

Versus

Hazoora Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

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

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiffs was dismissed by the Trial Court, vide judgment and decree, dated 31.10.2014. As even the appeal preferred against the said decree failed and was dismissed on 14.07.2015, the appellant-plaintiffs are in Regular Second Appeal before this Court. The parties to the *lis*, hereinafter shall be referred to their original positions in the suit.

The plaintiffs prayed for a decree for injunction restraining the defendant from causing any encroachment upon any portion of the street, shown in Red colour in the site plan appended with the plaint. In brief, the case set out by them was: that plaintiff No. 1, and the defendant were real brothers. And, plaintiff No. 2 happened to be their nephew, being son of their pre-deceased brother. A family partition was effected between the parties, and as a result, the parties had raised construction upon their

respective portions that had fallen to their shares, without there being any obstruction. The street that was shown in Red colour in the site plan, was 9 feet in width on its western side adjoining to the road that was carved out about 20 years ago. But the defendant intended to encroach upon a portion thereof that abutted his plot, leaving the said street as 7 feet.

In the written statement filed on behalf of the defendant, the family partition between the parties was conceded. But as regards the width of the street it was asserted that throughout the said street was only 7 feet wide from its inception.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the plaintiff-Himmat Singh, PW-1, conceded in his cross-examination that while the family partition was effected between the parties, no map or site plan was prepared showing the width of the passage/street, at a particular point, to be 9 feet. No witness was examined by the plaintiffs either, in whose presence the alleged partition had taken place. Further, the cross-examination of PW-1 also revealed that he never made any complaint against the defendant, in the office of the Block Development and Panchayat Officer, as regards the alleged encroachment of the street. Although the plaintiffs examined Jasmail Singh Assistant Engineer, Block Samiti, Banga, PW-3, to prove the existence of the street, but he too conceded in his cross-examination that he had not seen any revenue record or related documents, showing the length and breadth of the disputed street. Significantly, plaintiff No.2-Sukhwinder Singh, PW-2, admitted in his cross-examination that rather the site plan/map produced by the defendant was correct. Thus, from the admission on the

part of the plaintiffs and their witnesses, as also the evidence led by the defendant, it was established that throughout the width of the street was 7 feet, and it did not differ from eastern to western side. Therefore, the plaintiffs failed to substantiate their claim

On being pointedly asked, learned counsel for the appellant-plaintiffs could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the position on 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.

(ARUN PALLI)
JUDGE

May 23, 2018

P Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO