

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

RSA No.5386 of 2015(O&M)
Date of decision: 09.05.2018

Aziz Khan and another

... Appellants

Versus

Surjeet Singh (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. PS Dhaliwal, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Vide judgment and decree dated 10.11.2014, the suit filed by the plaintiff was dismissed. However, in an appeal preferred against the said decree, the same was set aside and the suit of the plaintiff was decreed. That is how, the defendants are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for mandatory injunction directing the defendants to remove the encroachment caused on the passage (Pahi) leading from Sirhind-Bhadson road to the land of the plaintiff, situated at village Behbalpur, and restore the site to its original position.

On a consideration of the matter in issue, and the evidence on record, the appellate Court reached a conclusion that the case set out by the plaintiff was that there exist 11 feet wide passage that also abuts the fields of the defendants and leads to his land holding. However, the defendants had encroached upon an area measuring 2 feet, that formed part of the passage,

and constructed a pucca khal, chabacha and kotha thereupon as depicted in the site plan (Ex.P1). And the evidence on record also showed that the 11 feet wide passage was actually left by all the khewatdars to be used jointly for their usage and easementary rights. Plaintiff Surjeet Singh appeared as his own witness (PW1) and substantiated his claim. Further, a copy of the demarcation report (Ex. P2) was proved on record, which showed that the defendants had indeed caused an illegal encroachment. No cogent evidence was led by the defendants in rebuttal. Veracity of the report (Ex.P2) was also not questioned by filing any objection thereto. Not just that, none other than the defendant himself i.e. Aziz Khan (DW1), conceded in his cross-examination that 11 feet wide passage actually existed at the spot and the same was kept to be used jointly and commonly by all the khewatdars. Needless to assert that the defendants were at liberty to either move the revenue agency or make an appropriate application in the present proceeding for demarcation of the site to show that neither there existed any passage nor defendants could be accused of any such encroachment. But no such measures were resorted to. On the contrary, besides plaintiff Surjeet Singh, Balbir Singh (PW2) and Hari Singh (PW4) testified in their depositions as regards the existence of the 11 feet wide passage as also the portion encroached upon by the defendants. The plea that no such passage was reflected in the revenue record and, therefore, the plaintiff could not be granted the injunction was also rejected, for existence of the passage and its usage was duly proved. That being so, the only and the inevitable conclusion the appellate Court could reach was to decree the suit. On being pointedly asked, learned counsel for the appellants could not refer to anything on

record to show that the conclusion arrived at by the appellate Court was 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. Appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

09.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO