

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1628 of 2017 (O&M)

Date of Decision: October 30, 2018

Mukhtiar Singh & others

...Appellants

Versus

Sukhdev Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jasbir Rattan, Advocate,
for the petitioner.

AMIT RAWAL, J.

CM No.3919-C of 2017

Prayer in the application is for substitution of L.Rs of appellant No.5, who died on 04.09.2014. The application is supported by an affidavit.

Application is allowed. The applicants are impleaded as legal heirs of appellant No.5 for the purpose of prosecuting this case only.

RSA No.1628 of 2017

Appellant-plaintiffs have approached this Court against the concurrent findings of fact, whereby suit for permanent injunction in respect of the passage shown in red colour in the map dated 23.02.2011, has been dismissed.

The aforementioned suit was filed on the premise that the plaintiffs are owners in possession of the houses, flour mill and electric motor and are in peaceful use of the passage leading to the property for the last more than 40-45 years, but defendants under the mistaken notion

threatened to block the passage and, therefore, cause of action accrued to file the suit.

Respondent-defendants opposed the case of the plaintiffs by stating that the plaintiffs did not have any concern with the same and in some other suit filed by the defendants against the plaintiffs, admitted the case to be in khasra numbers. There was no passage in khasra No.685 as alleged by the plaintiffs. Local Commissioner had been appointed at the back and his report could not be looked into.

The replication was filed, wherein the averments in the plaint were reiterated.

Mr. Jasbir Rattan, learned counsel representing the appellant-plaintiffs submitted that there is gross illegality and perversity in misreading of the evidence on record resulting into dismissal of the suit, for, Kashmiri Singh PW-1 deposed that the site plan was prepared after visiting the spot. The sale deed in favour of the plaintiffs had also been proved through the testimony of Feroz Khan Deed Writer PW-2. The Local Commissioner report dated 10.03.2011 could not have been ignored by the Courts below, much less the site plan. Even if for the sake of argument there is no passage in khasra number, the plaintiffs are co-owners and in possession of the same on the basis of the jamabandi.

I am afraid, the aforementioned argument is not able to bring the the case within the realm of perversity. The remedy for the plaintiffs was to seek the partition. No evidence has been led to show the existence of the passage being used by the parties to the lis. A co-sharer cannot seek injunction against co-owner until and unless the parameters laid down by the Full Bench of this Court in **Bhartu Versus Ram Sarup**, 1981 PLJ 204

are not attracted.

Revenue record does not reflect the existence of the rasta. Throughout the proceedings before the courts below, there was no injunction. No prejudice appears to have been caused to the plaintiffs during all this period.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings in dismissing the suit, much less involvement of substantial questions of law. Resultantly, the appeal is dismissed.

October 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No