

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5049 of 2014 (O&M)

Date of Decision : 30.11.2018

Rajesh Sharma and another

....Appellants

Versus

Joginder Pal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Arya, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for the respondents.

Surinder Gupta, J.

This is regular second appeal against concurrent judgments of Courts below whereby the suit filed by plaintiffs-appellants seeking the relief of perpetual injunction restraining the defendants from interfering or dispossessing plaintiffs-appellants from *Haveli-cum-kitchen* garden comprising of about 12 *marlas* (apx.) as shown in the site plan (Ex. P-1) was dismissed.

2. Though, appellants have projected the dispute regarding *Haveli-cum-kitchen* garden but the dispute in fact is of passage shown as 'ABCD' in the site plan (Ex. D-2). The case of defendants-respondents is that plaintiffs have encroached upon this passage and clubbed the same in their property on both sides of this passage.

3. Both the Courts below have looked into this aspect and have recorded concurrent findings that plaintiffs-appellants claim the area of *Haveli-cum-kitchen* garden as 12 *marlas*. It is proved on file that they are in possession of more than 12 *marlas* of land at the spot, which clearly

shows that they have merged in their land the passage in between their property. A note was taken of the fact that earlier the dispute was pending before the DDPO, Gurdaspur regarding this passage and DDPO had disposed of that matter with direction to parties to seek demarcation. Plaintiffs-appellants instead of seeking demarcation opted to file the civil suit. A local commissioner was appointed in this case, who prepared the site plan after inspection and gave report that from point 'K' to 'C' (it appears alphabet 'C' was wrongly typed as 'G' in the report), appellants have constructed 3 ft. high brick wall which, as per site plan prepared by local commissioner, appears to have been constructed to block the passage as shown in the site plan. The site plan proved on record as Ex. D-2 shows that on western and eastern side of plots, there is a street and in between a passage/street is in existence which bifurcates the plot of plaintiffs into two parts.

Learned counsel for appellants could not point out as to how plaintiffs-appellants are in possession of more than 12 *marlas* of land at the spot, when they are claiming the area of their plot as 12 *marlas* apx. They have also avoided to give dimension of their plot in site plan (Ex. P-1). A person, who has encroached upon public passage is not entitled to discretionary relief of injunction and the Courts below have rightly declined the relief of injunction sought by appellants, who instead of coming to the Court with clean hands, concealed the dispute of passage, litigation with the *gram panchayat* on this issue and sought relief of injunction by projecting the dispute with regard to possession of their '*haveli*' and kitchen garden.

On perusal of judgments of Courts below, I find no legal or

factual infirmity therein calling for any interference in this appeal. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

November 30, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*