

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

RSA No.2626 of 2018 (O&M)

Date of decision: 22.05.2018

Rinku Mittal and another

... Appellants

Versus

Smt. Shashi Wadhwa and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sharad Aggarwal, Advocate
for the appellants.

REKHA MITTAL, J. (Oral)

CM No.7877-C of 2018

Heard.

Allowed as prayed for. Annexures A1 to A5 are taken on
record, subject to just exceptions.

Disposed of accordingly.

Main Case

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction filed by the appellants/plaintiffs in respect of 33 feet wide passage was dismissed by the trial Court and findings recorded by the trial Court have been affirmed in appeal by the District Judge, Panipat.

Counsel for the appellants would argue that the appellants jointly purchased land measuring 14 kanal 6 marlas comprising killa

No.128 mushtil 8 min east (7-18) and 7/2 (6-8) of khewat No.525 in village Kurad, Sub Tehsil Bapoli, Panipat from Ramesh Kumar respondent/defendant No.2 through registered sale deed No.761 dated 01.07.2011. Mutation No.3014 was sanctioned on the basis of that sale deed. As per plea of the appellants, land purchased by them through the aforesaid sale deed was adjoining to a 33 feet wide passage that is also mentioned in the sale deed. The 33 feet wide passage in the east side of said land is the only passage for access to 14 kanal 6 marlas land purchased by the appellants.

Ramesh Kumar, defendant/respondent No.2 assured the plaintiffs that passage was left out for ingress and outgress to land purchased by them. The passage was carved out of land comprising killa No.28 mushtil 3/1, 3/2, 8/1 and 8/2 which was never used for any purpose other than the passage. In the first week of May, 2015, Smt. Shashi respondent/defendant no.1 tried to encroach upon the passage proclaiming that land underneath the passage was purchased by her from defendant/respondent No.2 vide sale deed No.662 dated 11.07.2014.

The respondents/defendants filed the written statement and in turn contested claim of the appellants/plaintiffs with regard to existence of any passage on land purchased by defendant No.1 vide sale deed dated 11.07.2014. It is averred that plaintiffs on the same day i.e. 01.07.2011 also purchased land comprised in killa No.128 mushtil 3/2 (4-14) vide sale deed No.760 dated 01.07.2011 but this fact was concealed by them to make the

court believe that they have no access to their land from the main road whereas killa No.128 mushtil 3/2 which is adjoining to killa No.128 mushtil 8 min east (7-18) and 7/2 (6-8) abuts the main Panipat Sanoli Khurd road.

The controversy between the parties led to framing of issues reproduced in para 5 of judgment of the trial Court. Parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties, in the light of materials on record, the trial Court answered issue no.1 with regard to disentitlement of the appellants to relief of permanent injunction against the respondents and eventually the suit was dismissed.

Counsel for the appellants has assailed judgments of the Courts primarily by raising two fold submissions. It is argued that in the sale deed No.760 dated 01.07.2011, there is reference to existence of a passage in the eastern side of the land, subject matter of sale but the passage actually exists on the western side of land purchased through the aforesaid sale deed. It is further argued that mistake in giving boundary towards which the passage is in existence in sale deed Ex.PW3/1 is the result of typographical mistake and cannot be construed against the appellants to deny their entitlement to use the passage on western side of land, purchased by them. The second submission made by counsel is that the passage in question is the only path for having access to land comprising killa No.128 musthil 8/1 and 7/2, therefore, appellants are

entitled to use the said passage by way of easement of necessity. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **HP State Electricity Board Vs. Shiv K. Sharma, 2005(1) RCR (Civil) 418.**

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned.

The trial Court, on a detailed consideration of the materials on record and submissions made during the course of hearing including the aforesaid two contentions raised before this Court, has rejected claim of the appellants by recording its finding in paras 15 to 17 of the judgment. In para 15, the Court has held that plea of the appellants that there was typographical mistake in the sale deed mentioning the passage in the east side of the land purchased by the plaintiffs is beyond pleadings and cannot be accepted. In addition, it has been held that the appellants having admitted execution of sale deed cannot raise a question that recital in the sale deed is not true and correct. The appellants cannot disprove contents of a written document by oral evidence in view of provisions of Sections 91 and 92 of the Indian Evidence Act, 1872. Further held that even if there was some mistake in the sale deed, the appropriate remedy for the plaintiffs under Section 26 of the Specific Relief Act, 1963 i.e. rectification of the registered instrument but the appellants have not filed any suit till date for the said relief.

So far as plea of appellants that the alleged passage is the only

way to have access to land purchased vide sale deed No.761 dated 01.07.2011, it has been held that the appellants concealed the factum of purchase of land comprised in killa No.128 mushtil 3/2 adjoining Panipat Sanoli Khurd road which is adjoining to the land in question towards northern side. Plea of the appellants that land comprised in killa No.128 mushtil 3/2 adjoining Panipat Sanoli Khurd road was allotted to Satish Mittal PW5, brother of Rinku Mittal plaintiff No.1 in a family settlement is based upon an afterthought story because no such fact was pleaded in the plaint. It has further been held that testimony of PW5 in this regard cannot be considered because the same pertains to a fact beyond pleadings.

Counsel for the appellants, in response to a query, has fairly informed that in the aks shajra, no such passage towards western side of land purchased by the appellants has been recorded/reflected. Appellants have not produced any revenue document showing the existence of any passage towards western side of land purchased by them vide sale deed No.761 dated 01.07.2011. It appears that the present suit has been filed by the appellants/plaintiffs in order to create some right of passage from western side of land comprising killa No.128 mushtil 8/1 and 7/2 purchased by them through the aforesaid sale deed. As the appellants also purchased land comprising khasra No.3/2 which is adjoining to killa No.128 mushtil 8/1 and khasra No.3/2 adjoins Panipat Sanoli Khurd road, plea of the appellants that they have the right to use the land/passage towards western side for having access to land of aforesaid two khasra numbers by way of

easement of necessity gets falsified and belied. In this view of the matter, I do not find any reason to interfere in the concurrent findings recorded by the Courts when otherwise the judgments do not suffer from an error much less perversity nor a question of law is involved for adjudication after notice to the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

22.05.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No