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

**RSA No.3135 of 2018 (O&M)
Date of Decision: 19.12.2018**

Mohinder Singh

.....Appellant

Vs

Joginder Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. C.B. Goel, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.8143-C of 2018

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 2 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 2 days in filing the present appeal is condoned.

RSA No.3135 of 2018 (O&M)

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration.

[2]. Brief facts are that the plaintiff filed a suit for declaration to the effect that the property shown in red colour marked with letters as 'ABCDEFGH' and 'MN' in the rough site plan was a *gali sare aam* having width of 10 feet. The decree dated 03.06.1996 passed by the Civil Judge (Jr. Divn.) Jagadhri in Civil Suit No.256 of 89 titled '*Joginder Singh vs. Sandhu Singh*' was claimed to be illegal, null and void and not binding upon the rights of the plaintiff. Plaintiff further claimed that the order passed by the Authorities in the proceedings under Section 133 Cr.P.C. were illegal, null and void. Plaintiff sought mandatory injunction directing the defendants No.1 to 3 to remove the encroachment over the *gali* in question.

[3]. Besides the aforesaid, the plaintiff also sought permanent injunction restraining the defendants from blocking the flow of daily, dirty and rainy water of the house of the plaintiff i.e. marked by letters 'BHIJKL', shown in yellow colour in the site plan and also restraining the defendants from raising further construction in the *gali sare aam*. Plaintiff claimed that he was owner and in possession of the house marked by letters 'BHIJKL' where he had constructed two rooms, verandah, cattle shed, kitchen and open *sehan* within the *abadi* of the village and the same was his ancestral property. The said house was connected with the street at point 'AB' shown in the red colour in

the rough site plan and dirty/daily used/rainy water used to discharge from which and the said *gali* was the only passage for ingress and egress of the plaintiff. There was one more small street of 5 feet width also connected with the open *Sehan* of the house of the plaintiff, but the said street was too narrow and the house of plaintiff was 5-6' high from the open space and it was not possible for the plaintiff to make ingress and egress from the said street. The said street was totally inadequate as no *Jhota Buggi* or other vehicle as well as grass for cattle could pass through. Therefore, the plaintiff staked his claim over point 'AB' which was claimed to be a public street.

[4]. Defendants No.1 to 3 refuted the case of the plaintiff on all counts. The decree dated 03.06.1996 passed by the Civil Judge (Jr. Divn.) Jagadhri was claimed to be legal and the orders passed by the Authorities under the proceedings of Section 133 Cr.P.C were also claimed to have been lawfully passed.

[5]. Both the parties went to trial on specific issues.

[6]. Plaintiff himself appeared as PW-1 and tendered his affidavit Ex.PW-1/A. Thereafter he also examined one Sukh Ram, Clerk, Tehsil (Sales) Yamuna Nagar as PW-2. Plaintiff relied upon photocopy of rough site plan as Ex.P-1, Report of Local Commissioner as Ex.P-2, Site plan as Ex.P-3 and certified

copy of judgment dated 03.06.1996 as Ex.P-4, certified copy of judgment dated 12.07.2011 as Ex.P-5, photocopy of order dated 12.11.2009 as Mark-A, photocopy of letter dated 13.06.2005 as Mark-B, photocopy of letter written by Naib Tehsildar to *Halqa Girdawar* dated 09.06.2005 as Mark-C and report No.360 dated 08.05.2001 as Mark-D. The evidence of the plaintiff was closed by him with the production of aforesaid documents.

[7]. Defendants examined Sher Singh as DW-1 and thereafter they got their evidence closed by tendering copy of order dated 12.11.2009 as Ex.D-1 and copy of judgment dated 12.07.2011 as Ex.D-2.

[8]. On the basis of evidence on record, both the Courts below have dismissed the suit.

[9]. I have considered the submissions made by learned counsel for the appellant.

[10]. Perusal of the record would show that the dispute is with regard to the street shown with letters 'AB' in the site plan Ex.P-3. Plaintiff claimed the said street to be a public street maintained by the Gram Panchayat. He further claimed that it was the only street which was being used by the plaintiff for ingress and egress to his house and the daily used/rainy/dirty water used to be discharged through the said street only since long. In the proceedings under Section 133 Cr.P.C. filed before

the SDM, Bilaspur, the order was passed and the same was upheld by the Appellate Court as well.

[11]. Admittedly, the parties are in litigation for the last more than 17/18 years. The existence of street is required to be established by way of evidence on record. The burden was on the plaintiff to establish that the street at point 'AB' is in operation. No evidence was led by the plaintiff except the oral evidence and the site plan Ex.P-3 to prove the existence of street at point 'AB' as alleged by the plaintiff. Plaintiff himself claimed that the street is in existence in the site plan of the *abadi*. No site plan of *abadi* has been produced on record which was prepared at the time of partition of the country. Plaintiff has not produced any cogent evidence. The plea of the plaintiff that the defendants have blocked the street at point 'AB' in the year 1998 forcibly during pendency of the petition under Section 133 Cr.P.C. filed by the plaintiff, could not be proved by leading any such evidence.

[12]. According to stand of the plaintiff, the property vests in Gram Panchayat, but the Gram Panchayat has not filed any eviction petition against the defendants for their illegal encroachment over the Panchayat land/street. Plaintiff only relied upon documents Mark 'B' and Mark 'D' which could not be proved by leading any evidence of their execution. Even the site

plan of the custodian Department to prove existence of the street could not be proved as the document was in Urdu language. No field book and any site plan maintained by the Gram Panchayat were brought on record by proving their execution. Therefore, Ex.D-1 was challenged before the appellate authority and Magistrate, who after visiting the spot dismissed the petition and order was upheld in the revision petition filed by the plaintiff vide order dated 12.11.2009 passed by the Addl. District Judge, Jagadhari. The said order has already attained finality.

[13]. Both the Courts below have recorded the concurrent findings of fact on the basis of material on record. The findings cannot be held to be perverse on account of misreading of evidence in any manner. No question of law worth cognizance is involved in this appeal. The same is found to be devoid of merits and is accordingly dismissed in *limine*. All other civil. Misc. applications are accordingly disposed of.

December 19, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No