

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-5198-2017 (O&M)

Date of decision: 12.01.2018

Sita Ram and another

..... Appellants

Versus

Raj Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. HS Shehrawat, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

1. Un-successful defendants have preferred the instant Regular Second Appeal, assailing the judgment and decree dated 25.08.2017 of the Ist Appellate Court, affirming the judgment and decree of the trial Court date 31.03.2014.

2. Put pithily, respondent-plaintiff claiming himself to be the owner in possession of the suit land comprising Khewat No. 2328/2059, Khatoni No. 2840 and Khasra No. 432//18 (1-0), according to jamabandi for the year 2003-04, filed a suit for mandatory and prohibitory injunction for restraining the appellants-defendant from raising any construction over the same illegally and forcibly.

3. Upon notice, the appellants-defendant contested the suit, taking the plea that the suit land was lying vacant on the spot having a passage which was being used by them and public at large for the last 22 years and, thus, they had acquired easementary rights over the same. The demarcation report Ex. P-2 was wrong, illegal and against law had no binding effect on

their rights.

4. The trial Court after trial decreed the suit in toto thereby, restraining the appellants-defendant from interfering into the peaceful possession of the respondent-plaintiff over the suit land lying vacant on the spot, vide judgment and decree dated 31.03.2014.

5. Being aggrieved, the appellants-defendant approached the Ist Appellate Court, but remained un-successful as their appeal was dismissed vide judgment and decree dated 25.08.2017.

6. Learned counsel *inter alia* contended that since the appellants-defendant were using the suit land since last more than 22 years, therefore, they had acquired the right of easement to use the same as a passage. There was no iota of evidence on the record to show that appellants-defendant had ever threatened the respondent-plaintiff to raise any construction illegally and forcibly over the suit land, therefore, the trial Court ought to have dismiss the suit having no cause of action. Even in the list of encroachers submitted by the respondent-plaintiff, on the basis of demarcation report of Kanungo, the names of the appellants-defendant were not mentioned as such. Both the Courts below have failed to appreciate that a road and drain was constructed from the public funds by the Government functionaries over the suit land.

7. Having heard learned counsel for the appellants-defendant at considerable length, this Court finds the instant Regular Second Appeal completely devoid of merits for the reasons to follow:

8. No question of law much less substantial has been raised for consideration in this appeal, therefore, the same is not maintainable.

9. The suit land is lying vacant on the spot and therefore, the trial Court has rightly held PWD (B&R) department as also a encroacher of the

suit land amongst others, inasmuch as, according to demarcation report Ex. P-2 and site plants Ex. P-3 to Ex. P-5, the suit land was found to have been encroached by PWD (B&R) and some other private persons. Therefore, it does not lie in the mouth of the appellants-defendant that they had acquired easementary rights over the suit land. Their bald assertion to the effect that they were using the suit land as a passage since long has no legs to stand in the absence of any cogent and convincing evidence, therefore, the appellants-defendant have rightly been disbelieved by both the Courts below.

10. In view of the discussion made above, the instant Regular Second Appellant, being completely devoid of any merit and frivolous one is dismissed with costs of ₹ 10,000/-, to be deposited with the Haryana State Legal Services Authority.

11. A copy of this order be sent to Member Secretary, Haryana State Legal Services Authority, for necessary action and compliance.

January 12, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No