

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

RSA No.5262 of 2017 (O&M)

Date of Decision: September 17, 2018

Brij Lal

...Appellant

Versus

Gram Panchayat Mulodi and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. J.P.Sharma, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

Plaintiff No.3 has filed this regular second appeal against the judgment and decree of the courts below, whereby, the suit has been dismissed.

Plaintiffs No.1 and 2 have been impleaded as proforma respondents No.5 and 6 in the present appeal. The plaintiffs are legal representatives of the original plaintiff Sultan, who died during the pendency of the suit. He had filed a suit for permanent injunction against the defendants with the averment that Himta and Girdhari sons of Mansha were owners in possession of Ahata No.44 Ghar No.52 as per *Bandobast* 1932 Birkarmi (suit property). Himta son of Mansha was grand-father of Sultan. After the death of Himta, Jai Dayal and Girdhari became owners in possession of the suit property. There exists a *rasta-sare-aam* comprising of Ahata No.46 Ghar No.54 towards the northern side of the suit property which was being used by the plaintiff and other inhabitants of the village. It was his case that he was in exclusive possession of the suit property and had constructed his residential house thereupon. Defendants No.2 to 4 have

constructed their residential houses over some part of the land situated towards eastern side of the rasta comprising of Khasra No.102, 143, 145 and 103. There was another rasta as well comprising of Khasra No.145, which was carved out at the time of consolidation. Under the garb of constructing a road through Ahata No.46 Ghar No.52, defendant No.1 - Gram Panchayat Nangal Kaliya wants to construct a cemented road through the property owned and possessed by the plaintiff and thereby encroach upon the suit property.

The case of the defendant No.1 Gram Panchayat was that in fact it was the plaintiffs and defendants No.2 to 4 who had encroached upon the *rasta-sare-aam* by raising construction thereupon. The son and brother of plaintiff Sultan have blocked the rasta. The Panchayat wanted to construct a cemented road through the *rasta-sare-aam* comprising of Ahata No.46 Ghar No.54. However the road could not be constructed due to encroachment by the plaintiff, his son and brother. The brother of the plaintiff namely Jai Dayal had already filed a civil suit titled as 'Jai Dayal Vs. Gram Panchayat' which is pending. In that case a local commissioner was appointed who in his report stated that Jai Dayal, Lal Ram and Parsa son of Mooliya had encroached upon rasta-sare-aam.

Defendants No.2 to 4 in their written statement admitted that there exists a rasta comprising of Ahata No.46 Ghar No.54 towards the northern side of the house of the plaintiffs. The said rasta had been encroached upon by Lala Ram and Jai Dayal. No part of the rasta had been encroached upon by them.

On the basis of the evidence the Ld. Trial Court noted that there

was no dispute that the suit property was owned by Himta son of Mansha. The plaintiffs were his successors-in-interest.

Report of the Local Commissioner dated 24.10.2007 Ex P1 did not indicate any encroachment upon the rasta in front of Ahata No.44 Ghar No. 52 by the plaintiffs. But the subsequent Local Commissioner who was appointed at the instance of the plaintiffs in its report showed that Brij Lal son of Sultan (the appellant herein) had encroached upon the rasta of Ahata No.46 Ghar No.54 i.e., the property of Gram Panchayat -defendant No.1. As it was the plaintiffs who were found to have encroached upon the rasta-sare- aam belonging to the Gram Panchayat they were held not entitled to any relief of injunction. The suit was accordingly dismissed.

The Ld. Lower Appellate Court affirmed the findings of the Trial Court.

Findings of fact have been recorded by the courts below relying on the reports of the Local Commissioners. It has not been shown as to how those findings are perverse or against the evidence on record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the application for condonation of delay in filing the appeal.

September 17, 2018

**(HARINDER SINGH SIDHU)
JUDGE**

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

