

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

**RSA No. 492 of 2018
Date of decision : 23.01.2018**

Rajinder Singh ...Appellant

versus

Raghubir Singh and anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amandeep Singh, Advocate
for the appellant.

RITU BAHRI, J. (Oral)

This regular second appeal is directed against the concurrent finding of facts recorded by the Court below whereby the suit of the plaintiff-appellant (herein after to be referred as 'the appellant'), has been dismissed.

Brief facts of the case are that the appellant filed a suit for permanent injunction for restraining defendants, their servants, agents etc from encroaching upon or occupying the area of passage shown as CDQR in the site plan and also from changing nature of the passage which is a part of common passage shown as ABCD in the enclosed site plan in any manner and also from restraining them from raising any construction over said passage situated at Kahnuwan Road, Gurdaspur fully detailed in the head note of the plaint pleading inter alia that he had purchased four marlas of land from Smt. Ravi Kanta vide sale deed dated 17.05.1989. Thereafter, he constructed his house over suit property and the same is shown as

FGHIMLPON in the second site plan showing the present position of the property. Before 22.07.1991, original location of the property purchased by the appellant was as shown in the site plan KLAM. Defendants Raghbir Singh and Gurdip Kaur also purchased a plot measuring 07 marlas from Mavinderpal Singh and Amritpal vide sale deed dated 11.11.1988 with measurement i.e 15 feet each from its North and South side with the measurement of 105 feet from its Eastern and Western side. Measurement and Location of said plot prior to 22.07.1991, was shown in first site plan as DBNO. Gurprit Singh, Sukhbir Kaur and Dalbir Singh also purchased the properties which were existing before 22.07.1991. On 22.07.1991, a mutual adjustment/rajinama was entered and arrived at between the parties, vide which the defendants took the area of passage denoted by letters ABCK which was existing on 22.07.1991 for their ingress and egress but for the passage in dispute.

Both the Courts below dismissed the suit of the appellant, as the appellant was only relying upon a compromise effected on 22.07.1991 but he was not able to prove on record that very document. Thus, he was not able to establish that the nature/measurement of the plots in question along with passage in question was changed. P.W.3 Ajaib Singh also admitted that he had sold his $\frac{1}{2}$ marla of land vide sale deed dated 04.12.1990 in favour of defendant Raghubir Singh and had delivered the possession of the same to him. The plot shown in site plan Ex P2 in red colour denoted by CDQR is the plot which he had sold to the defendant Raghubir Singh which establishes that defendant had purchased the dispute property. No

independent witness was examined to establish that the properties actual and factual position is different from the revenue record. Further appellant in his cross examination admitted that Daljit Singh is his brother-in-law and he appeared as witness in a suit filed by Raghubir Singh against Daljit Singh with regard to the property in dispute of the present case. The rights with regard to property in dispute stands already adjudicated vide judgment and decree Ex D1 and D2 and the appellant himself admitted that he appeared as witness in that case for his brother-in-law Daljit Singh. In the statement of the appellant, he deposed that he has relinquished all his rights with regard to property in dispute in favour of Daljit Singh.

Learned counsel for the appellant has relied upon a judgment of Hon'ble the Supreme Court of India in a case of *Justiniano Antao vs. Smt. Bernadette B. Pereira, 2005(4) RCR Civil 505*.

But this judgment is of no help to the appellant as the appellant in the present case is claiming his right over the passage on the basis of compromise, which he had never placed on record.

Accordingly, the judgment and decree passed by both the Courts below do not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

23.01.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No