

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

**RSA-5464-2017 (O&M)
Date of Decision: 09.08.2018**

Harbans Singh

... Appellant

Versus

Malkiat Singh & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Mohit Jaggi, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Plaintiff/appellant is in second appeal before this Court having remained unsuccessful in both the Courts below.

2. Pleadings on record would indicate that the plaintiff/Harbans Singh instituted a suit for permanent injunction restraining the defendants from obstructing his use of a passage which existed in front of the land of the plaintiff measuring 2 bighas and which has been purchased by him vide registered sale deed No.41, dated 02.08.2000. Initially relief of injunction prohibitory had been sought and thereafter, by raising a plea that during the pendency of the suit, the defendant had even raised a wall to block the usage of the passage, suit was amended seeking mandatory injunction as well.

3. In the original suit as well as in the amended plaint, the categorical averments made by the plaintiff were to the effect that the passage in dispute which leads to the land of the plaintiff is the only passage available with the plaintiff.

4. Relief sought by the plaintiff stands declined vide judgment dated 19.02.2015 passed by the trial Court and even a civil appeal preferred by the plaintiff/appellant has met the same fate vide decision dated 09.12.2016 passed by the learned Additional District Judge, Patiala.

5. Counsel for the plaintiff/appellant has vehemently argued that since the defendant/respondents herein had set up a plea that the passage in question is their private passage onus as such is upon the defendants to prove and corroborate such stand.

6. Having heard counsel for the appellant at length, I am of the considered view that the instant appeal is without merit and deserves to be dismissed.

7. Both the Courts below have recorded a finding that even though plaintiff was setting up a case of the disputed passage to be a common/public passage, yet no evidence had been adduced on record to substantiate such plea. That apart, even the site plan Ex.P5/A which had been relied upon by the plaintiff was not in consonance with the prayer for prohibitory and mandatory injunction as had been claimed. Even the deposition of PW5 Bhupinder Singh Sidhu, Draftsman was to the effect that he had not seen the passage in question as per prayer and relief sought.

8. The Courts below have also rightfully been swayed by the fact that the plaintiff had not approached the Courts with clean hands. In spite of the categorical pleadings that the passage in question was the only way for ingress and egress but the plaintiff's own witness i.e. PW3 Baldev Singh in his cross examination had deposed to the following effect:

“There is another way available to the plaintiff to reach his fields from the eastern side.”

9. Yet another factor which would reflect that an attempt had been made to mislead the Court would be that the suit had been filed on 26.10.2009. Plaintiff's own witness i.e. PW1 and PW3 deposed in cross examination that the wall constructed on the passage in question had been constructed prior in point of time i.e. on 02.10.2009. As such, plea taken on behalf of the plaintiff/appellant that the defendants had raised the wall during the pendency of the suit has been found to be factually incorrect.

10. It may also be noticed that the relief of permanent and mandatory injunction as regards the passage was being taken on the strength of a sale deed dated 02.08.2000 Ex.P1 but the Courts below have noticed that in such sale deed only two sides of the property have been mentioned and as such, there was an incomplete description and no inference could be drawn that a street mentioned on one side of the property could be seen as the disputed passage itself.

11. The impugned judgements passed by the Courts below denying the plaintiff/appellant the relief of permanent and mandatory injunction are based on due appreciation of evidence and are founded on cogent reasoning.

12. The instant appeal does not raise any question of law much less substantial question of law.

13. Appeal is dismissed.

14. Since the main appeal itself has been dismissed, pending applications, if any, shall also stand dismissed.

09.08.2018

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

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