

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

CR No. 4149 of 2017(O&M)
Date of Decision: 24.07.2019

Dharam Kaur (Since deceased) through her
LR Sarabjit Kaur

-Petitioner

Vs

Gurdip Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Arun Abrol, Advocate
for respondents.

RAJ MOHAN SINGH, J. (ORAL)

1. After hearing learned counsel for both the parties it transpires that a suit for permanent injunction filed by Dharam Kaur was dismissed concurrently by both the Courts, whereas the counter claim set up by the defendants-respondents was allowed at the appellate stage, vide judgment and decree dated 05.02.2013 passed by District Judge, Gurdaspur. Operative part of the decree reads as under:-

"It is ordered that the appeal is accepted with costs. The appellants are held entitled to the possession of the suit property marked as ABCD and shown with red ink in the site plan Ex. P1/B relied upon by

respondent Dharam Kaur and which has been shown with red ink and marked as EFCD, and part of the street which has been marked as CDGH and shown with red ink in the site plan Ex. D1 relied upon by the appellant, as this portion of Khasra No.55 has been illegally encroached upon by the respondent. Accordingly, the counter-claim filed by the appellants stands decreed with costs.”

2. In order to understand the portions of land shown in the decree it would be necessary to have a glance over the site plans produced by the parties. Ex. D1 is the site plan produced by the defendants, whereas Ex. P1/B is the site plan produced by the plaintiff.

3. As per site plan produced by the plaintiff, there is no reference to the rasta CDGH as shown in the site plan Ex. D1 produced by the defendants. While decreeing the counter claim at the appellate stage, the lower appellate Court had adverted to the suit property marked by letters ABCD belonging to the plaintiff, whereas EFCD as per site plan Ex. D1 belongs to the defendants.

4. During the course of arguments, learned counsel for the parties have admitted that CDGH is common passage between the properties belonging to the parties.

5. Learned counsel for the petitioner undertakes to remove encroachment (if any) found on their behalf in the rasta

CDGH. The only grievance of the petitioner is that while passing the decree, even the rasta marked CDGH has been given to the defendants/respondents/counter claimants. To this extent, learned counsel for the respondents also agrees that defendants would not claim any title qua the rasta CDGH and same would be left for common use of the public at large.

6. In view of the abovesaid position, this revision petition is disposed of with a direction to the petitioner to remove the encroachment in the rasta CDGH as per site plan Ex. D1.

24.07.2019

rakesh

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No