

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

RSA No.4992 of 2013 (O&M)

Date of Decision : 10.05.2019

Malkiat Singh

..... Appellant

Versus

Gursewak Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Baltej Singh Sidhu, Advocate,
for the appellant, along with
Amandeep Singh present in person
for Malkiat Singh (appellant).

Mr. Ramandeep Singh Pandher, Advocate,
for the respondent, along with
Gursewak Singh-Respondent present in person.

SUDIP AHLUWALIA, J. (ORAL)

The matter is taken up for hearing.

The Suit was filed by the appellant seeking a permanent injunction against the respondent to restrain him from causing interference in the use of the path/*pahi* or from encroaching upon the said area or making culvert puller in the said passage path, running through the disputed Khasra No.21/2, which is a part of Rectangle No.140 situated within the Revenue Limits of Village Alamwala, Tehsil Malout. His case was that there was an amicable family settlement between himself and father of the defendant, namely Nar Singh, whereby land measuring 9 Marlas situated in Khasra No. 140/12/2/1 was passed on in favour of the respondent's father towards land measuring 18 Marlas in parts of Khasra Nos.24, 25 and 21 of

Rectangle Nos.139 and 140, and that the said land measuring 18 Marlas was being used as a passage to the appellant's land falling in Rectangle No.140.

The contention in this regard is that there was a mistake in the *roznamcha* and mutation, whereby instead of the very limited disputed land falling in Khasra No.21/2 was wrongly shown as 20.

Ld. Counsel for the appellant has highlighted the statements of admission in execution of the respondent Gursewak Singh as DW-1 before the Ld. Trial Court, in which it was admitted that the land measuring 18 Marlas forming part of Khasra Nos.24 and 25 in Rectangle Nos.139 and 21 in Rectangle No.140 was being actually used as a passage by the appellant/plaintiff for approaching rest of his land situated in Rectangle No.140.

On the other hand, Ld. Counsel for the respondent has drawn attention to the judgment dated 21.01.2015, passed by the Ld. Additional Civil Judge (Senior Division), Malout, (Annexure A-1) and the Mutation No.3247 dated 25.04.2013, which would go to show that the disputed land forming part of Khasra No.21 otherwise belongs to the respondent notwithstanding that it has been actually used as a passage by the appellant/plaintiff.

At this stage, further hearing is temporarily deferred by the Court with a direction upon the Ld. Counsel for both sides to seek instructions from their respective clients regarding verbal arrangement, if any, they can arrive at, considering that they are otherwise closely related to each other.

A short while later, it is submitted on behalf of both sides that while the appellant does not deny ownership of the respondent to the disputed part of Khasra No.21, in view of the judgment dated 21.01.2015 (Annexure A-1), yet he expects the respondent side not to cause any hindrance in his usage of the same as a common passage for approaching his own land in Rectangle No.140.

In view of the aforesaid submissions of both sides, the appeal is disposed off by setting aside the impugned orders of both the Ld. Courts below with a modification that while the ownership of the disputed land remains with the respondent, he or others claiming through him shall not obstruct the plaintiff's side from approaching their land in Rectangle No.140 from the path situated above Rectangle No.143, comprising of the land measuring 18 Marlas in all, being slightly below 1 Marla in Khasra No.24/2 and 9 Marlas in Khasra Nos.25/2 and 21/2, and the plaintiff side shall not be obstructed. Further, both the parties also at liberty to approach the Competent Authorities for formalizing/seeking partition of the lands held by them in a mutually convenient manner in future.

10.05.2019
Apurva/rittu

(SUDIP AHLUWALIA)
JUDGE

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