

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

**RSA No.450 of 2016 (O&M)
Date of Decision.29.01.2019**

Gurnam Singh and others

...Appellants

Vs

Kashmir Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Arya, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present appeal is directed against the judgment and decree of the lower Appellate Court whereby suit of the respondent-plaintiff seeking restraint against the appellants-defendants from putting iron gate or widow towards the private street of the plaintiff as shown red in the site plan Ex.P1, has been decreed by the lower Appellate Court, though dismissed by the trial Court.

The plaintiff relied upon the site plan prepared by David Masih, PW3 wherein portion shown in green had his house and yellow of the defendants. There is already a rasta/road/phirni towards western side giving access to the defendants to their houses, much less, having windows. The area shown in brown colour is in dispute alleged to be a private street.

The defendant opposed the suit and denied the street to be a private street.

Both the parties in support their respective pleadings examined witnesses.

The trial Court dismissed the suit simply on the ground that it was within the red line/lal dora, therefore, plaintiff failed to establish it to be a private street, however, the lower Appellate Court reversed the finding.

Mr. Arya, learned counsel appearing on behalf of the appellant submitted that the plaintiff miserably failed to prove the street to be private as his own witness Pargat Singh admitted that he spent money for brick paving the street and the plaintiff himself admitted it to be a public street. In such circumstances was no occasion for the lower Appellate Court to differ with the well reasoned judgment of the trial court.

I am afraid aforementioned argument of learned counsel for the appellants is not sustainable, for, the defendants did not deny the site plan Ex.P1, thus, remained uncontroverted. On examination of the record of the trial court by this Court, it revealed that brown portion in the site plan is passage/street and the injunction sought is on the opening of the street whereby defendants had threatened to install gate and also windows. In case defendants are permitted to install gate, access to the house of the plaintiff would be hindered. It is not case of denial of easementary right to the defendants as they have separate entries toward their houses but the alleged threat if permitted, would definitely cause impediment of easementary right.

In view of such circumstances, I do not find any illegality and perversity in the finding rendered by the lower Appellate Court being the last court of fact and law, much less, no

substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 29, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No