

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

RSA No.5944 of 2016 (O&M)
Date of decision : 19.03.2019

Hardwari Lal and others

...Appellants

Versus

Ved Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Singh Yadav, Advocate for the appellants.

Mr. Kul Bhushan Sharma, Advocate
for respondent Nos.1 and 3.

ANIL KSHETARPAL, J. (ORAL)

CM No.15627-C of 2016

Prayer in the application is for permission to place on record Jamabandi for the year 1967-68 and jamabandi for the year 2001-02 and Aksh Sajra 1963-64 as Annexures A-1 to A-3 by way of leading additional evidence.

No ground is made out to allow the application. In any case, the documents attached even if considered in evidence do not advance the case of the appellants.

Application is disposed of.

Main case

Plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Dispute in the present case is with respect to a passage. Plaintiffs-appellants claim such passage to be their private passage whereas defendants claim that the passage is for general public.

Both the Courts on appreciation of evidence have found that in the sale deed through which the appellants purchased the property, the site in question has been referred to as passage common to all. Still further, it has come in evidence that the Municipal Committee, Rewari has constructed cemented drain on both sides of the street and doors and windows of the defendants open towards this street.

Learned counsel appearing for the appellants while referring to the copy of jamabandi for the year 1967-68 has submitted that originally this property was owned by one individual who had carved out the plots and, therefore, the disputed property is a private street.

This Court has considered submissions.

Once in the sale deed through which the plaintiffs purchased the property prove that there is a passage which is for common use because the word used is '*shamlat*', the plaintiffs cannot thereafter be permitted to assert their exclusive right, title or interest over the land which is part of a street. It has also come in evidence that doors and windows of the houses situated on the opposite side are already opening towards street in question. Still further, Municipal Committee is maintaining the aforesaid

street.

Hence, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

19.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No