

RSA No. 1897 of 2018 (O&M)

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

**RSA No. 1897 of 2018 (O&M)
Date of decision: 22.11.2019**

Ranjit Kaur

... Appellant

Versus

Satpal

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Vijay Rana, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 04.10.2016, and as even the appeal preferred against the said decree failed and was dismissed on 15.5.2017, she is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for injunction restraining the defendant and his agents from causing obstruction in the street by raising any construction, affixing gates, doors etc. In brief, the case set out by her was that she was owner in possession of the house shown in yellow colour in the site plan appended with the plaint. The property shown in blue colour in the site plan, though in possession of the defendant, but he was not the owner thereof. There was a street between her house and the plot of the defendant, which was being used by her for egress and ingress to her house. But as the defendant sought to affix a gate and block the street, thus the suit.

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Defendant, in his written statement, pleaded that plaintiff was trying to encroach upon his plot. In fact, the area that was shown as street by the plaintiff, formed part of the plot of the defendant. Further, plaintiff had not produced any document to show if the suit property was actually a public street. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that for plaintiff to succeed, she was required to prove that suit property was, indeed, a public street, and was being used as such by her for egress and ingress to her house. To prove her claim, she examined Madan Lal (PW1), but in his cross-examination, he conceded that apart from the passage in question, there were three other passages that led to the house of the plaintiff and were being used as such by her. Further, he conceded that Panchayat had never brick paved the alleged street. Plaintiff (PW2) appeared as her own witness and admitted that on the eastern side of her house, there existed a rasta, whereas the street in question abuts her house on the western side. Be that as it may, to prove that site in question was, indeed, a public street, she ought to have examined any concerned government official or member of the Gram Panchayat along with necessary records, who could depose qua the nature of the suit property. No document was brought on record either from the office of the Block Development and Panchayat Officer with whom usually records of the village street/drainage etc. are kept and maintained. No doubt, defendant did not lead any cogent evidence to prove his title but that could hardly be a factor to conclude that suit property was a public street. Thus, once plaintiff failed to prove that site in question was a public passage and was being used as such, the only and the inevitable conclusion that could be reached: the

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suit was liable to be dismissed.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 22, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	YES/NO