

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

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RSA No. 2378 of 2017 (O & M)
Date of decision : 25.2.2019

Balwinder Singh**.....Appellant****v.****Ranjit Singh and another****.....Respondents****CORAM HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. A.S. Bhatti, Advocate, for
Mr. A.S. Barnala, Advocate, for the appellant

AMIT RAWAL, J.**CMs No. 5790-91-C of 2017 :**

For the reasons mentioned in the applications, which are supported by affidavits, delay of 58 days in re-filing and 5 days in filing the present appeal is condoned. Applications are allowed.

RSA No. 2378 of 2017 :

The appellant/plaintiff has not been successful in claiming injunction against the respondents/defendants from interference in his house situated in Khasra No. 880/2 within the revenue limits of Village Sekha, Tehsil and District Barnala and also restraint qua obstruction regarding use of street allegedly going to his house, by forcibly, entering into his house.

It was alleged that the plaintiff had built a house on khasra No. 880/2 which was a *gair mumkin abadi*. All the co-sharers have built their houses as reflected in red colour in the site plan attached with the suit. There is a street on the southern side abutting to the house of the plaintiff, which stops 2 karams earlier to the house of the plaintiff and had been raised by incurring the

expenses from his own pocket. The defendants, who under the greed using that street instead of using the street existing in khasra No. 903, created a new passage through the property of the plaintiff and also moved an application before the Block Development and Panchayat Officer, Barnala. Despite repeated requests, the defendants did not pay any heed to the requests. Thereafter, the plaintiff filed the aforementioned suit.

The defendants opposed the suit and stated that the passage of 5'-6" was already in existence adjoining the suit property and a writing dated 21.8.1972 was entered into between the father of the plaintiff and father of the defendants. The aforesaid passage was in the possession of Gran Panchayat. On receipt of the application, the BDPO found that the street had been encroached by the plaintiff. In order to save the wrath of some action being initiated by the Department, the aforesaid suit was filed on 16.8.2013.

The plaintiff in support of his evidence, examined Bachan Singh Patwari as PW1, Bhola Singh Numberdar as PW3 and himself appeared as PW2 and brought on record various documents i.e. musavi, field book, jamabandi for the year 2007, site plan and closed the evidence.

On the other hand, the defendants examined 3 witnesses and placed on record the application, report and writing of 1972.

Mr. A.S. Bhatti learned counsel appearing on behalf of Mr. A.S. Barnala, Advocate for the plaintiff submitted that the site plan and other documents brought on record established the possession of the plaintiff. In such circumstances, non impleadment of the Gram Panchayat was not essential and necessary. The writing had not been proved on record. Mere admission of the document does not confer any right.

The arguments of learned counsel for the appellant has not been

sustainable, as the report of the BDPO dated 23.2.17 establishing the encroachment has not been controverted and the suit was filed on 16.8.2013. Apparently it appears that time was consumed to avoid the consequential effect of the report and claiming injunction against the defendant without impleading the gram panchayat. Findings of the Courts below dismissing the suit, in such circumstances, cannot be said to be suffering from any illegality or perversity.

No ground for interference is made out, much less involvement of any substantial question of law.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

25.2.2019

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No