

RSA-2392-2017 (O&M)

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

**RSA-2392-2017 (O&M)
Date of decision : 26.03.2019**

Virender Singh

... Appellant

Versus

Gram Panchayat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sant Lal Barwala, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful before the Courts below seeking permanent injunction restraining the defendants from constructing street except the land comprised in Khewat No.205, Khatoni No.238, Khasra No.268 (3-16), as per jamabandi for the year 2007-08, situated in Village Mehrada, Tehsil Julana District Jind.

It was alleged that the plaintiff is resident of the village and had filed the petition under Section 7(2) of the Punjab Village Common Land Act, 1961 (in short 'the 1961 Act'), against Bhopal Singh, as he was encroacher, which was allowed. He is Ex-Sarpanch of Gram Panchayat Medrada and having ration and voter card and every interest for the development of village and right to protect the rights of the Gram Panchayat. In the western side of the suit property, Bhopal (owner of Khasra No.305) had encroached upon the land of Khasra No.268 measuring 12:12, 3:3 measuring 4 marlas by constructing Chabutra i.e. total measuring 9 marla and in the same way Raghbir also encroached. The suit property is a common path used by the villagers.

Defendant No.1 appeared and stated that there was

RSA-2392-2017 (O&M)

encroachment on the portion of the street and he was not causing any encroachment. It was XEN Panchayat, who was making street as cemented.

Defendant No.3 also appeared and admitted the filing of the petition under Section 7(2) of the 1961 Act and stated that as and when the encroachment removed, the street will be completed.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that in view of the admission, the Courts below ought to have decreed the suit, though no evidence was required to be led, despite that it has been mentioned.

I am afraid the aforementioned argument is not sustainable for the simple reason that Bhopal Singh, alleged encroacher, was not impleaded as a party. In view of the stand of defendant No.3, in the written statement, the appellant should have approached the competent authority for execution of the ejectment decree under Section 7(2) of the 1961 Act. The simpliciter suit for permanent injunction without mandatory injunction is not maintainable.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the second appeal is dismissed.

26.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**