

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

**RSA No.293 of 2017 (O&M)
Date of Decision.22.02.2019**

Balwinder Singh

...Appellant

Vs

Major Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Malik, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant has not been successful in defending the suit preferred by the plaintiff for mandatory injunction for restoration of the passage in the land bearing khasra No.70//15/1, 15/2 with further relief of restraint against the defendant from interfering into peaceful use of passage and demolition.

It was alleged that both the parties were co-sharers in the suit property. Some dispute arose between the plaintiff and grandfather of the defendant namely Pritam Singh, was settled by compromise dated 15.6.1971. As per the aforementioned compromise, two karam wide passage out of khasra No.70//5, 6 and 15/2 was given to plaintiff. After death of Pritam Singh, property was inherited by his grandsons namely Balwinder Singh i.e. defendant and Sikander Singh. They were also bound by the terms of aforementioned compromise but did not honour the same, though the passage was in existence for the last 40 years.

Defendant denied the existence of passage and as well as factum of compromise.

Plaintiff in support of pleadings examined three witnesses i.e. Major Singh as PW1, Baljinder Singh Rana, Draftsman as PW2 and Jagroop Singh, co-village as PW3 whereas defendant examined himself as DW1.

Mr. Malik, learned counsel appearing on behalf of the appellant-defendant submitted that plaintiff's witness Jagroop Singh admitted that there was a common passage alongside water channel which is about 14-15 feet wide. Once there was an alternative passage, injunction regarding passage in dispute could not be granted, as the compromise was of the year 1971 and only certified copy has been placed on record. Original compromise did not see light of the day, therefore, not admissible in evidence. One line in cross-examination of the defendant regarding admission of the compromise cannot be a ground for granting injunction, as the entire onus is on the plaintiff, which was not discharged, therefore, there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Malik, for, the defendant in cross-examination admitted existence of the agreement. Once its existence has not been denied, non-production of the original document cannot be said to be fatal or entail into drawing of adverse inference. Even otherwise, Section 90 of the Indian Evidence Act permits appreciation of evidence if the document is more than 30 years old.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 22, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No