

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

RSA No.3641 of 2017 (O&M)

Date of decision : 15.03.2019

Sitender and another

...Appellants

Versus

Jitender Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulvir Narwal, Advocate for the appellants.

Mr. A.K. Singh Goyat, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiffs for declaration that the property in dispute has been unauthorisedly occupied and for mandatory injunction directing the defendants to vacate the unauthorized occupation.

It is claimed that the property in dispute is comprised in Khasra No.148 which is a passage leading to the farm of the plaintiffs. It was further pleaded that the first suit filed by Pawan Kumar and others was only for injunction and the Court dismissed the same on the ground that the construction has already been raised.

Defendants contested the suit and pleaded that they are co-sharers and in possession of the property since 1959-60 and, therefore, they

have become owners by way of adverse possession.

Learned trial Court dismissed the suit on the ground that the State Government has not been impleaded as party defendant. Although in the ownership column, State Government is owner, however, learned First Appellate Court after re-appreciation of the evidence, accepted the appeal and held that in case of dispute with regard to passage which is for common use, the State Government is not required to be impleaded as party.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing on behalf of the appellants has submitted that the plaintiffs are residents of different village and in absence of State being party, the suit filed by the plaintiffs was not maintainable. He further submitted that although the original document Mark A could not be traced out, however, it is apparent that the predecessor-in-interest of the defendants-appellants had purchased the property.

On the other hand, learned counsel for the plaintiffs-respondents has submitted that in the revenue record, the property is owned by the State of Haryana and it is not being disputed that it is comprised in Khasra No.148 which is measuring 27 kanals and 9 marlas, a public passage. Hence, he submitted that the defendants-appellants cannot claim any right, title or interest in the public passage even if they have encroached thereupon.

This Court has considered the submissions of the learned counsel for the respective parties.

As regards argument of learned counsel for the appellant based upon Mark-A, it has not been proved. Still further, even if Mark A is taken into consideration, it neither refers to any khasra number nor it give the description of the property. In absence of evidence to prove that the property was purchased by the defendants, the property which is a public passage cannot be allowed to be occupied by the private individuals. Public passage is for use of the public and the Court should always make an endeavour to ensure that there is no encroachment thereon . Overwhelming revenue record proves that it is part of a passage.

As regards argument of learned counsel that the plaintiffs-respondents are residents of different village, it may be noted that two villages are adjoining to each other, one is known as Singhpura Kalan whereas second is known as Singhpura Khurd. Different *hadbast* numbers have been assigned. Still further, it is not in dispute that the passage leads to the farm/agricultural land owned by the plaintiffs/respondents, therefore, the plaintiffs have locus standi.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

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

15.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No