

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

**SAO No.48 of 2014 (O&M)
Date of Decision: April 09, 2019.**

Satish @ Satbir and others

.....APPELLANT(s).

VERSUS

Bhateri and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.B. Sharma, Advocate
for the appellant (s).

Mr. Ashish Yadav, Advocate
for the respondent No.1(i) and (ii).

SURINDER GUPTA, J.

Respondent-plaintiff Bhateri Devi (since deceased, through her legal representatives) filed suit seeking relief of permanent and mandatory injunction as follows:-

“(a) Decree for permanent injunction in favour of the plaintiff and against the defendants No.1 to 4 restraining the defendants No.1 to 4 from creating the obstructions of any kind in jointly using the joint Gali marked by letters FBCE, by the plaintiff and marked by HI or from closing the Gali by fixing the chokhat at any place of the Gali perpetually.

(b) That in case, during the pendency of the suit, the defendants No.1 to 4 forcibly succeeds in raising construction of any kind over the Gali in dispute shown in red colour marked by letters FBCE and in

creating obstruction therein, then in that event the disputed Gali may kindly be restored as earlier through the present suit itself.”

The suit was dismissed with the observations that plaintiff has failed to prove the existence of the passage in question. Learned trial Court also observed that plaintiff has not got the passage demarcated to establish that it is part of khasra No.104 or 105. The relevant observations of the trial Court as contained in para 9 and 10 of the judgment are reproduced as follows:-

“9. Now, when plaintiff claimed it to be a joint rasta, two things needed to be proved; firstly, its user according to the existing state of affairs justifying leaving such a rasta on the spot and consequently its demarcation to establish whether it is part of Khasra No.104 or 105. Son of plaintiff as witness PW1 himself admitted that plaintiff has three sides open to passage. The disputed Rasta makes it four side open. The site plan filed with the plaint also establishes Rasta Sare aam towards west and South and Rasta towards North. Thus, there appears to have been no necessity of leaving common passage for use by the plaintiff also. Although such passage was necessary for approaching land in possession of defendants, as they, with one Dalbir have purchased the share from Rameshwar, in whose share as per the admitted case of plaintiff Khasra no.104 had fallen. It is also admitted by plaintiff witnesses including the PW4 draftsman who scaled the map towards the disputed passage there exist no gate, windows of plaintiff Bhateri and in the absence of the same, its use by the plaintiff becomes doubtful. Thus, the necessity of leaving a common passage is not

established by plaintiff.

10. Admittedly, either before the suit or thereafter there appears to have been no serious attempt on the part of plaintiff to get the passage demarcated and establish that it was part of khasra no. 104 & 105 jointly. If it was part of khasra no.104 alone, certainly it could have not been jointly. Unless, it is established otherwise that the khasra no.104 was otherwise valuable so passage was left from it so as to not effect share of other cosharer. Thus, due to non demarcation of the dispute passage, no interference can be drawn to conclude as to which part of khasra number this allegedly joint passage exist. The sale deed in favour of Urmila by the successors of Ramswaroop establish towards South a 10' passage has been shown along with the plot of Vijay Singh. The cross-examination of plaintiff as PW2 and her witnesses brings forth that the L-shape boundary line of defendant Satish and other exist on the spot and the same only indicates that a perpendicular arm of this "L shape boundary" is passage to reach the portion in possession of defendant Satish and others."

Learned first Appellate Court agreed with the observations of the trial Court that the dispute pertains to demarcation of khasra nos.104 and 105 to ascertain as to whether the street is part of khasra no.104 alone. The observations of first Appellate Court in para 25 of the judgment are reproduced as follows:-

"25. From the site plan of both the parties as well as evidence adduced on record, it is not clear where the remaining two marla land of khasra no.105 exists. DW2 Pardeep and Ram Chhel Lumberdar have admitted that khasra no.104 is part and parcel of khasra no.105. So, in these circumstances, I deem it proper to remand the case

back to the learned court below with direction to appoint local commission of revenue background to ascertain whether the disputed passage is part of khasra no.104 or 105 and remaining where two marla land of khasra no.104 exists. It is ordered. After receipt of the learned court below the report, shall decide the case at the earliest preferably within three months from the date of passing of this judgment.”

It is a case where both the parties have come up with site plan of the street in question. The properties of the parties in question form part of khasra Nos.104 and 105. Learned trial Court as well as learned first Appellate Court were of the opinion that the demarcation of khasra Nos.104 and 105 will resolve the controversy as to whether the passage in question is part of khasra Nos.104 or 105. Learned trial Court while dismissing the suit of the plaintiff has observed that no serious attempt was made to get the land in question demarcated. Learned first Appellate Court was also of the view that demarcation of the land is required. When both the Courts are of the opinion that case cannot be decided without demarcation of the land, the order of the first Appellate Court remanding the case with direction to the trial Court to appoint a local commissioner of revenue background to ascertain as to whether the disputed passage is part of Khasra nos.104 or 105 is justified in the facts and circumstances of the case and call for no interference in this appeal. The dispute between the parties will stand resolved once for all as appointment of local commissioner will help to resolve the dispute between the parties and the trial Court to record a specific finding regarding the existence or non-existence of passage as claimed by the plaintiff.

As a sequel of my above discussion, this appeal has no merits/.
Dismissed.

April 09, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>