

RSA No. 3776 of 2018 (O&M)

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

**RSA No. 3776 of 2018 (O&M)
Date of decision: 01.10.2019**

Fire Ram and others

... Appellants

Versus

Hansa and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sudhir Aggarwal, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiffs was dismissed by the trial court, vide judgment and decree dated 30.7.2014, and as even the appeal preferred against the said decree failed and was dismissed on 18.1.2018, they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a declaration that the orders passed by Assistant Collector 1st Grade, Gurgaon, as regards partition were illegal, null and void, and thus, liable to be set aside, for they had acquired the right of easement to use the rasta/passage, shown in red colour in the site plan appended with the plaint by prescription of time. Further, restraining the defendants from causing interference and encroaching upon any portion of the said rasta.

In brief, the case set out by the plaintiffs has been that they had purchased the land shown in green colour in the site plan, comprised in rectangle No. 39, killa No. 11/2/2 as also 20/2 from defendants No. 4 to 7,

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pursuant to a sale deed dated 11.6.2001, along with the right to use the rasta from their land.

In defence, defendants No. 1 to 3, pleaded, *inter alia*, that plaintiffs were co-owners in joint possession of a land comprised in specific numbers as described in the written statement. However, it was denied that there existed any two karam wide rasta shown in red colour in the site plan.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that a Local Commissioner was appointed by the Court, to report as regards the existing state of affairs at the spot. However, report (Ex.P5), submitted by the Local Commissioner, nowhere reflected the existence of any rasta on the suit land. Likewise, even in the site plan (Ex.P6), relied upon by the plaintiffs, there was no mention of any rasta, as depicted in the site plan Ex.PW5/A. Further, in the sale deed (Ex.D4), on the basis of which, Kishan (PW1) and others, sold the land to the plaintiffs, there was no reference or recital qua the two karam wide rasta, that was being used for egress and ingress. At any rate, onus to prove that any such rasta, indeed, existed at the spot and was being used as such, was upon the plaintiffs, which they failed to discharge by leading any cogent evidence. Oral testimony of the witnesses examined by the plaintiffs were hardly of any consequence to corroborate their claim. In fact, Mool Chand Poonia (PW5), conceded in his cross examination that though he prepared the site plan on the instructions of the plaintiffs, but he never visited the spot. Once the plaintiffs failed to prove that any such passage/rasta, as claimed by them existed, the only and the inevitable conclusion that could be reached: the plaintiffs failed to prove their claim. Upon being pointedly asked, learned counsel for the appellants could not refer to anything on

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record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

**(ARUN PALLI)
JUDGE**

October 01, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO