

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

RSA-4730-2018

Date of Decision: October 23, 2019

Roshan Singh

...Appellant

Versus

Tarlok Singh and others

...Respondents

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

Present: Mr. Sunil Kumar Pandey, Advocate,
for Mr. D.R. Punia, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by respondent No. 1-plaintiff was decreed by the Trial Court, vide judgment and decree, dated 26.08.2014. For an appeal preferred against the said decree failed, and was dismissed on 23.01.2018, defendant No. 1-Roshan Singh is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

Plaintiff prayed for a decree for mandatory injunction directing defendant Nos. 1 and 2 to remove the obstruction caused by them, as depicted in the site plan appended with the plaint in Red colour, with Mark-ABC, by raising construction in the passage, comprised in Khasra No. 534, Khewat No. 997, Khatauni No. 1434/1, marked as GHIJKLMNO, shown in Yellow colour, and to restore the said passage to its original position.

In brief, his case was that he was owner of a land measuring 9 Marlas, comprised in Khewat No. 890, Khatauni No. 1263, Khasra No. 42//11/6 (0-9), situated in village Ajnoha, District Hoshiarpur, shown in Green colour in the plan appended with the plaint. Passage, bearing Khasra No. 534 (0-19), shown in Yellow colour, was entered in the jamabandi for the year 2002-03, as 'Public Passage'. The passage comprised in Khasra No. 534 was marked as GHIJKLMNO, which was being used as such by plaintiff and other inhabitants of the village. House of defendant Nos. 1 and 2 was situated on the northern side of the passage, shown in Blue colour in the site plan. Although defendants had no authority to cause any obstruction in the usage of the said passage by raising any construction or otherwise, but they unlawfully encroached a portion of the passage shown in Red colour, marked as ABC, and merged the same in their house. Thus, the suit.

In the written statement filed by defendant Nos. 1 and 2, the site plan relied upon by plaintiff was said to be incorrect, being contrary to the position existing at the spot. Further, they had not caused any obstruction in Khasra No. 534, as alleged. Further, the site marked GHIJKLMNO, was not a part of Khasra No. 534. And, they had constructed their house in their own property bearing Khasra No. 42//9/2/2, in the year 1993. Thus, the suit was liable to be dismissed.

In a separate written statement filed by defendant No. 3-Gram Panchayat, Village Ajnoha, existence of passage, i.e. *Rasta Sare Aam*, was admitted, which was being used by the public at large since long. And,

defendant No. 3 had no concern with defendant Nos. 1 and 2, and in case they had caused any obstruction or encroached the passage, the same was liable to be removed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that short issue that required determination was if defendant Nos. 1 and 2 had encroached upon the passage comprised in Khasra No. 534, marked as GHIJKLMNO and shown in Yellow colour in the site plan (Ex. P-1)? Upon the application moved by plaintiff to demarcate the suit land, Field Kanungo was appointed as Local Commissioner, who submitted his report (Ex. P-2). And, analysis thereof revealed that site measuring 1/2 Karam, shown as Mark-ABC in the site plan, dated 30.08.2006, comprised in Khasra No. 534, towards west-southern side, was encroached by defendant Nos. 1 and 2. Meaning thereby they had encroached upon a portion of the public passage, and merged the said portion in their own property, which formed part of Khasra No. 42//9/2. The said report bears the signatures of defendant-Roshan Singh, plaintiff and many other persons present at the time of demarcation. Thus, from the report submitted by the Local Commissioner, it was proved that defendant Nos. 1 and 2 had indeed encroached upon an area measuring 1/2 Karam comprised in Khasra No. 534. Not just that, defendant-Roshan Lal conceded in his cross-examination the existence of the disputed passage at the spot, and plaintiff & other inhabitants of the village use the said passage. Plea of defendant Nos. 1 and 2 that Local Commissioner had not carried out demarcation from any pucca point/burji, was also

misconceived, for, defendant-Roshan Lal admitted in his statement that there was no pucca point/burji in the village. Even otherwise, defendant Nos. 1 and 2 never raised any such objection while the land was demarcated by the Field Kanungo. Thus, the only and the inevitable conclusion that could be reached: defendant Nos. 1 and 2 encroached upon the site measuring 1/2 Karam, comprised in Khasra No. 534, as per the report of the Local Commissioner (Ex. P-2). Accordingly, a decree for mandatory injunction was issued requiring defendant Nos. 1 and 2 to remove the said obstruction and restore the passage to its original position.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions concurrently arrived at 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 23, 2019

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO