

RSA-6069-2017 (O&M)

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

RSA-6069-2017 (O&M)

Date of decision : 30.01.2019

Kaka Singh (deceased) through his LR's and others

... Appellants

Versus

Uttam and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the appellants-plaintiffs for setting aside the sale deed dated 09.01.2004 along with consequential relief of permanent injunction restraining the defendants not to obstruct the street/passage i.e. 11 feet wide and 450 in length, has been dismissed.

The plaintiffs initially in the year 1988, instituted the suit for injunction, but during the pendency of the suit, the appellants, owing to the subsequent event i.e. sale deed, under challenge, sought the amendment by incorporating the relief of declaration. It was alleged that Hansa Singh retired Kanungo, conducted the demarcation and as per his report dated 10.11.1997, there was a passage in the eastern side of Khasra No.56//20/2/16 being 11' in width. In earlier suit, a compromise was arrived at between the parties and the suit was withdrawn on 16.05.1998, but again, out of greed the defendants, wanted to raise the boundary wall by encroaching 3' in width at point AB, which necessitated the plaintiffs to file the suit.

Defendant Nos.1 to 3 opposed the suit by saying that the

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property of the defendants was left out as back court yard or approach from the back side from the street from west. Even otherwise, the khasra numbers of the property of the defendants were quite different than that of the plaintiffs. There was nothing common between the two properties of plaintiff-Kaka Singh, had his own independent passage from the northern side. The observations of the kanungo was self-serving statement. Even the sale deed dated 19.09.1980, whereby the plaintiffs derived the title, did not show any existence of the street/passage.

Defendant Nos.4 to 7 filed the separate written statement and taken the plea of objection of Order 2 Rule 2 and Section 11 of the Code of Civil Procedure. Khasra number of the plaintiffs was stated to be different than that of the defendants.

In support of the pleadings, the plaintiffs examined as many as eight witnesses and brought on record various documents, whereas the defendants examined four witnesses and tendered many documents in evidence.

Mr. Aggarwal, learned counsel for the appellants-plaintiffs submitted that the area, in dispute, is unauthorized private colony, therefore, revenue record i.e. *aks shajra*, showing the existence of the passage, was not required to be led, but the evidence of the witness and the neighbour, much less, admission of the defendants, lead to an irresistible conclusion that there was an existence of *rasta*/passage, as the threat of construction loomed large. The finding of the trial Court qua non-production of the revenue record, thus, in such circumstances, is totally suffering from infirmity and illegality. The sale deed sought to be challenged, as under the garb of ownership, the defendants intended to raise

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the construction of a wall upto height of 3 feet. Non-production of the sale deed by the plaintiffs cannot be fatal for denying the relief, in view of admission of the defendants.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper and of the view that there is no force and merit in the submissions of Mr. Aggarwal, for, the defendants brought on record the sale deed of the plaintiffs dated 19.09.1980 (Ex.D-1), revealing the plaintiffs i.e. purchasers, would not be entitled to open any door or widow towards any side except on northern side. In view of such fact, the plaintiffs, in my view, did not have any cause of action. Even otherwise, the lower Appellate Court being the last court of fact and law, in para 23, noticed that by virtue of impugned sale deed, the defendants have not amalgamated the land in the properties, but allowed to use it as street for general public including the plaintiffs and gave the liberty to approach the Municipal Committee for the purpose of acquisition of land. It has been brought to the notice of this Court that no such application has been filed.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees of the Courts below as cause of action, which though may have occurred at the initial stage, subsided, in view of the area being left by the subsequent transferees. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

30.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**