

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

**RSA-6130-2018 (O&M)
Date of Decision: October 01, 2019**

Ashok Kumar

...Appellant

Versus

Brij Bhushan Handa

...Respondent

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

Present: Ms. Maninder Kaur, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 25.03.2016, as even the appeal preferred against the said decree failed, and was dismissed on 25.09.2018, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

A decree for injunction was prayed for restraining the defendant from raising any construction/encroachment upon the public street, shown in Red colour in the site plan appended with the plaint, situated within Lal Lakir of village Jadla, Tehsil and District Nawanshahr. Further, directing the defendant to demolish the wall 'AB' from the street, shown in Red colour.

In brief, the case set out by the plaintiff was that one Kishori Lal had purchased a house, shown in Blue colour in the site plan, vide sale deed dated 23.07.1962. Plaintiff was also owner of a house situated on the

northern side of the house of Kishori Lal. The sale deed, dated 23.07.1962, executed in favour of Kishori Lal was accompanied by a site plan of the said property, which showed existence of a street (as depicted in Red colour in the site plan). For, the defendant, who claimed to have purchased a property on the western side of the street, attempted to encroach upon the same, and raise construction, thus, the suit.

In defence, it was pleaded, *inter alia*, that no such street as claimed by the plaintiff was in existence at the spot, nor any existed at the site ever. It was denied that Kishori Lal purchased the property shown in Blue colour, vide sale deed, dated 23.07.1962. In fact, the electric and telephone poles installed by the government, exist in the main street on the southern side of the plot of the defendant.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the onus to prove that a public street indeed exist at the spot, and was being used as such, was upon plaintiff, which he failed to discharge for lack of cogent evidence. This was not his case either that a private street was left for the usage of the parties by the original owner. Further, it was the case of the plaintiff that alleged street was left and brick paved by the Gram Panchayat. However, if that was so, plaintiff ought to have either arrayed the Gram Panchayat as a party to the suit or could lead evidence to show that the alleged street vests in Gram Panchayat. The records that Panchayat actually incurred some expenses to brick paved the street could always be proved. Therefore, the plaintiff failed to lead the best evidence in respect of his

claim. Mere opening of the windows or the ventilators in the property in dispute was not sufficient to hold that suit property was a public street. Not just that, Krishan Lal, PW-1, testified in his deposition that there was a pakka road made by the Gram Panchayat on the eastern side of the suit property, therefore, plaintiff had access to his house through the other street maintained by the Gram Panchayat. That being so, the only and the inevitable conclusion that could be reached: the plaintiff apparently failed to prove his claim.

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 01, 2019

Pkapor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO