

RSA No. 870 of 2018 (O&M)

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

**RSA No. 870 of 2018 (O&M)
Date of decision: 17.10.2019**

Ram Kishan

... Appellant

Versus

State of Haryana and another

... Respondents

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

Present: Mr. Sachin Kaushik, Advocate, for
Mr. Rakesh Nehra, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff-appellant was dismissed by the trial court, vide judgment and decree dated 12.01.2016, and as even the appeal preferred against the said decree failed and was dismissed on 31.7.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for injunction. In brief, the case set out by him was that he was owner in joint possession of an agricultural land measuring 7 bighas 9 biswas, situated in village Asaudha Todran, Tehsil Bahadurgarh, District Jhajjar. Even though the defendants had no right, title or interest in the suit property, yet they intended to construct a road and a flyover over the suit land. Thus, the suit.

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In the written statement filed by the defendants, it was pleaded, *inter alia*, that defendants were constructing a public utility road and a flyover over their own land and the plaintiff or any other person had no concern therewith.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that to prove his case, plaintiff examined Mahender Singh (PW1), who testified in his deposition that road had already been constructed from village Asaudha to Bahadurgarh, and rather the same was constructed years ago. He also admitted that even the flyover had since been constructed and the same was beneficial to the inhabitants of village Asaudha. Though, plaintiff-Ram Kishan (PW2) tendered his affidavit (Ex.PW2/A) and deposed, in terms of his case set out in the plaint. Jag Bhushan, JE, PWD (DW1), proved in his testimony that even earlier a civil suit No. 192/07 was decided by the court qua the suit property, vide judgment and decree dated 28.4.2010 filed by the brother and mother of the plaintiff, wherein they had failed to prove their possession. Further, the road was constructed by Zila Parishad in the year 1953-54 from Asaudha to Kharkhoda and defendants were constructing the flyover for the benefit and welfare of the people in general. Once the evidence on record showed that a road had already been constructed over the suit property and was in possession of the defendants, the plaintiff was not entitled to the injunction prayed for. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on 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

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recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 17, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	YES/NO