

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

RSA No.946 of 2018(O&M)
Date of decision: 22.10.2019

Gurudwara Singh Sabha, village Jhumba, Tehsil & District Bathinda and
another

... Appellants

Versus

Amarjit Kaur and others

... Respondents

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

Present: Mr. Shubhashish Kukreti, Advocate, for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 16.07.2013. And as the appeal preferred against the said decree failed and was dismissed by the appellate Court on 29.07.2015, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a decree for injunction restraining defendants from causing interference in his peaceful possession, usage and enjoyment of the street comprised in khasra No.868 (0-10), situated on the northern side of the house of the plaintiff, and also from closing windows in wall AD opening in the said street. But the defendants formed a group and intended to construct a room by encroaching upon the said street, and

had also put a gate and constructed a wall at the entrance of the said street at mark DE, thus, the suit.

In the written statement filed by the defendants, it was pleaded, *inter alia*, that plaintiff had no concern with the street comprised in khasra No.866, which was common and meant for the use of inhabitants of the village, and her house did not exist in the said street. Likewise, the windows as also the water outlet pipes did not have any opening in the street in question. In fact, the house of the plaintiff existed in the street comprised in khasra No.868, which too was a common street. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that evidence on record proved that defendants contrary to their stand set out in the written statement had admitted that house of the plaintiff was situated adjoining to the Gurudwara Sahib. Shiv Pal Singh (DW1) also conceded in his statement that khasra No.868 was a common street situated on the northern side of the house of the plaintiff. He also conceded that windows and the water outlet of the house of the plaintiff existed towards the said street. The statements of the plaintiff and Nirmal Singh (PW2) fully proved the possession of the plaintiff as also her claim. Not just that, the report of Kanungo (Ex.P5), who was appointed as Local Commissioner by the Court, revealed that it was the defendants who had caused encroachment on the street that existed in khasra No.868. Likewise, Shiv Pal Singh (DW1) conceded in his statement that Surinder Singh Kanungo visited the spot on 19.12.2007 to carry out demarcation, and he too was present at the spot, and the report bears even his thumb impressions. Further, the report (Ex.P5) showed that khasra

No.868 was a street in which four windows of the house of the plaintiff and two rainy water outlet pipes existed. The plea that the plaintiff failed to prove ownership was also erroneous, for, defendants themselves conceded the plaintiff to be owner in possession of the house in question. The evidence on record showed that house of the plaintiff was purchased by her 24-25 years ago and since then she was residing therein, whereas Gurudwara Sahib came into existence only in the year 2007 and was still under construction. This factual position was conceded even by Shiv Pal Singh (DW1).

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions 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

22.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO