

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

RSA-74-2020 (O&M)
Date of decision : 13.01.2020

Gurdit Singh and another

...Appellants

Versus

Madan Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Inderjit Sharma, Advocate for the appellants.

Mr. R.K. Arya, Advocate for the Caveator-respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the Regular Second Appeal against the judgment and decree passed by the learned First Appellate Court reversing the judgment and decree passed by the trial Court.

The plaintiffs claims that there is a pucca street marked with words 'ABCD' in the layout plan attached to the plaint and the defendants be restrained from blocking either the street or the doors and windows opening in the street.

On the other hand, the defendants claim that they have purchased the property from Tarsem Singh and Hari Singh by a registered sale deed dated 24.03.2009 for a total sale consideration of Rs.3,15,000/- and the suit land is comprised in Khasra No.50(0-9). Disputed portion is not part of the street.

Learned trial Court, on appreciation of evidence, decreed the suit whereas the First Appellate Court has reversed the aforesaid judgment and decree. Learned First Appellate Court has held that the learned trial Court committed an error in putting the entire burden on the defendants to disprove the case of the plaintiffs. The Court also noticed that the learned trial Court committed an error by observing that both the parties admit that there exists a passage.

Learned First Appellate Court, on re-appreciation of evidence, has recorded following positive findings:-

- 1) Plaintiff No.1, when appeared in evidence, has admitted that the property in dispute is part of Khasra No.50 and he has no record or proof that the suit property is a common street.
- 2) The plaintiff, who is an educated person, filed an application before the BDPO, which was forwarded to the Sarpanch of the Village. The Sarpanch had replied that there is no street on the disputed site and the defendants have not made any encroachment. The Sarpanch had also explained that the aforesaid portion has never been brick paved by the Gram Panchayat. The First Appellate Court has noticed that the plaintiffs have intentionally withheld the aforesaid evidence from the Court.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

It is apparent from the perusal of the sale deed dated 24.03.2009 in favour of the defendants that passage is shown to be only on

the northern side. Towards southern side of the street, plot in question is located. It is further not in dispute that the houses of the plaintiffs are on the east and west side of the property in dispute. Both these houses are abutting the main street which is situated on the northern side. As noticed above, plaintiff No.1 when appeared in evidence admits that he has no evidence to prove that the property in dispute is part of common street. He further admits that the property in dispute is part of khasra No.50.

The plaintiffs had come to the Court claiming that the property is part of the street. The burden was on the plaintiffs to prove the aforesaid fact. In view of the significant admission made by plaintiff No.1, the suit filed by the plaintiffs was correctly dismissed by the First Appellate Court. In the present case, the plaintiffs have failed to prove that fact. Rather, plaintiff No.1 has practically admitted the case of the defendants.

In view thereof, there is no ground to interfere.

Accordingly, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

13.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No