

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

RSA No.3392 of 2019 (O&M)

Date of decision: 17.03.2020

Major Singh

... Appellant

Versus

Santokh Singh (deceased) thr LR

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. GS Punia, Sr. Advocate with
Mr. PS Punia, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent injunction filed by the respondent/plaintiff has been decreed to the following effect:-

In view of my findings returned upon above said issues, suit of the plaintiff succeeds and same is hereby decreed, with costs to the effect that the defendant is restrained himself through his agents, servants and associates from encroaching or cause to encroach, obstructing or cause to obstruct, demolishing or cause of demolish the passage/pahi comprised in khewat No.12, khatauni No.20, khasra No.2 shown as red colour in the attached site plan situated within the revenue estate of village Ferozpur, Tehsil Payal, District Ludhiana and is further directed to restore the portion of passage which was

damaged by him by ploughing as alleged by the plaintiff and further restraining the defendant from interfering or cause to interfere in the peaceful use and enjoyment of the above said pahi by the plaintiff except in due course of law. xx xx

In brief, the case of the respondent/plaintiff is that on 07.06.1968, the plaintiff along with Joginder Singh purchased land measuring 0B-3B i.e. pahi in dispute from Punjab Singh and Chanan Singh vide sale deed dated 07.06.1968 comprised in khasra No.2 min and linked two rastas/passage sare-aam comprised in khasra No.2212 of village Ghaloti and khasra No.51 of village Ferozepur shown in yellow and green colour in the site plan attached with the plaint. Land measuring 0B-2B was left by Chanan Singh for pahi in dispute in khasra No.2 min. The total area of pahi is 0B-5B at the spot. Since 07.06.1968 the respondent/plaintiff along with other inhabitants of village Ghaloti and Ferozepur is using the pahi in dispute peacefully, continuously without any interruption. The appellant has no right, title or interest over the pahi/passage in dispute. The appellant wants to grab and encroach the pahi in question illegally, forcibly and by dint of force.

The appellant filed the written statement and contested the suit. It was admitted that sale deed of 3 biswas of land was executed in favour of the plaintiff and pahi was carved along with butt (banna) of killa No.2 of village Ferozepur towards property of respondent/plaintiff comprised of khasra No.55 of village Ferozepur. The pahi ended after entering khasra

No.55. From that point, Santokh Singh carved pahi in his land in khasra No.55 on the east side of killa No.2 touching the pahi leading to village Ferozepur and village Gholati. Punjab Singh and Chanan Singh sold 22 karams but pahi was left upto 30 karams approximately to bring it to the fields of plaintiff. The pahi never existed as alleged and shown by the plaintiff in the site plan. All other material averments were denied with prayer for dismissal of the suit.

The respondent filed replication controverting the allegations made in the written statement and reiterated submissions made in the plaint.

The trial Court framed issues, reproduced in para 3 of the judgment of said Court. The parties adduced evidence, referred to in paras 4 to 11 of judgment of the trial Court. Having heard counsel for the parties in the light of materials on record, the trial Court decreed the suit in terms, noticed hereinbefore.

The appeal preferred by unsuccessful defendant did not find favour with the Additional District Judge, Ludhiana as the appellate Court affirmed findings of the trial Court without variance.

Counsel for the appellant, in line, with the allegations raised in the written statement would argue that no such pahi as has been claimed in the suit ever existed at the spot, therefore, there was no question of the appellant having demolished the existing pahi or entitlement of the respondent to seek its restoration, as has been allowed by the Courts. It is vehemently argued that as a matter of fact, 35 x 3 karam pahi mark B in site

plan Ex.P4 was in existence and thereafter this was connected with passage mark D in Ex.P4 through land of respondent comprised in khasra No.55 adjoining to khasra No.2 of village Ferozepur, owned by the appellant. It is further argued that the instant suit was filed by the respondent in order to create a right of passage through land of the appellant for the purpose of connecting rasta of village Gholati with rasta of village Ferozepur. It is argued that the Courts have committed a grave error rather perversity by allowing mandatory injunction directing restoration of passage shown in green color in the site plan Ex.P4. The last submission made by counsel is that area of portion shown in the green color would be much more than 3 biswas of land purchased by the respondent vide sale deed of 1968.

I have heard counsel for the appellant, perused the paper book and original records but find that the appeal is without any merit and deserves to be dismissed.

Perusal of the judgments passed by the Courts reveals that on detailed consideration of oral and documentary evidence on record, the Courts have recorded factual findings with regard to existence of disputed pahi and its demolition by the appellant during pendency of the suit. Counsel for the appellant failed to point out any materials on record sufficient to convince the Court that findings of the Courts are based upon mis-appreciation of evidence or failure to take into consideration any materials that has strong bearing qua decision of the case on merits. The respondent/plaintiff led voluminous evidence both oral and documentary to

establish his plea with regard to that pahi was in existence connecting villages Gholati and Ferozpur, later demolished by the appellant/defendant during pendency of suit. In this view of the matter, I do not find any reason to interfere in consistent factual findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, applications for condonation of delay in filing and refiling the appeal are of academic relevance.

17.03.2020

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No