

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

RSA-4870-2016 (O&M)
Date of decision : 18.02.2020

Charanjit Kaur

...Appellant

Versus

Karamjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Simranjeet Singh, Advocate for the appellant.

Mr. N.S. Gill, Advocate for
Mr. Munish Gupta, Advocate for respondent Nos.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit filed by the plaintiff for grant of decree for permanent injunction restraining the defendants from causing any obstruction in the common passage of the plaintiff.

The plaintiff claimed that her husband Mohinder Singh died in the year 2008 and she is residing in the house measuring 60' x 50' with gate opening towards common passage/street. It is claimed that the defendants are also using the same passage and they should be restrained from obstructing the passage of the plaintiff.

The defendants contested the suit and pleaded that Mohinder

Singh and Hardeep Singh were brothers whereas defendant No.1 is son of Hardeep Singh. Partition of the joint property between the brothers had already been taken place. The plaintiff does not have any door opening towards the passage in dispute. She further has no right to open the door.

Both the Courts, on appreciation of evidence, have found that there exists a passage. However, it has been brick paved by defendant No.1. Such passage is only for defendant Nos.1 and 2. Both the Courts have also found that the plaintiff is residing in other house and not in the house as has been pleaded by the plaintiff. On appreciation of oral evidence, both the Courts have recorded finding of fact that the plaintiff has no right to use the passage in question.

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 and the record.

Regular Second Appeals in this Court are regulated by Section 41 of the Punjab Courts Act, 1918, which reads as under:-

“41. Second appeals—(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :

- (a) the decision being contrary to law or to some custom or usage having the force of law;*
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law;*
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force*

which may possibly have produced error or defect in the decision of the case upon the merits.

[Explanation—A question relating to the existence of validity of a custom or usage shall be deemed to be a question of law within the meaning of this section].

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) [Sub-section 3 omitted by Punjab Act 6 of 1941, section 2(b)]”

Learned counsel for the appellant failed to draw attention of the Court to any documentary evidence proving that the plaintiff also has a right to use the disputed passage. Both the Courts have recorded findings of fact that it is defendant No.1 who has brick paved the aforesaid passage.

Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below, particularly when learned counsel for the appellant failed to draw attention of the Court to substantive misreading or non-reading of evidence or any error of law.

Accordingly, the present Regular Second Appeal is dismissed.

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

18.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**