

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

CM No.3161-C of 2017 in/and

RSA No.1328 of 2017 (O&M)

DATE OF DECISION : 11th FEBRUARY, 2020

Suresh

.... Appellant

Versus

Rajo Devi & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Sudhir Hooda, Advocate for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is second appeal filed by defendant No.1 challenging the concurrent judgments and decrees passed by both the courts below, whereby, the suit for mandatory injunction filed by the plaintiff, was decreed.
2. For the convenience, the parties are being referred to herein as plaintiff and the defendant; as they were described in the original suit.
3. The facts in brief, giving rise to the present appeal are that the plaintiff-contesting respondent No.1, had filed a suit for mandatory injunction for a direction to the defendants to remove the iron gate which was fixed at the point mentioned in the plaint in the street, with a further injunction not to create obstruction in the said passage. It was asserted by the plaintiff that the plaintiff was the absolute owner in possession of a plot measuring 540 square yards, which was delineated in the site plan attached with the plaint. The said plot was purchased by plaintiff-Rajo Devi from Roshni Devi daughter of Hukam Chand son of Chhajju vide

sale deed No.4380 dated 11.03.2010 and since then she was in possession of the same. A ten feet wide passage, which was also marked in the site plan appended to the plaint, as existing towards the western side of the plot of the plaintiff and northern side of the plot of the defendant(s), for ingress and outgress to the plot. The forefather of the defendant(s) and forefathers of vendor of the plaintiff had mutually settled for the existence of the said passage. The said passage was left for ingress and outgress of Hukam Chand, i.e., the predecessor-in-interest of the vendor of the plaintiff, namely, Roshni Devi. However, the defendant(s) had fixed an iron gate in the said passage to block it. Hence, the suit was filed.

4. For contesting the suit, the defendant, appellant herein, filed written statement taking a plea on merits that the passage in dispute was left by defendant No.1 from his agricultural land comprised in Khewat No.96/89; Killa No.20/11, so as to reach his own agricultural land. The plaintiff had no right, title or interest in the passage, as such.

5. Parties led their respective evidence. The plaintiff examined her vendor Roshni Devi and the other persons of the area; and also placed on record the site plan, sale deed, Jamabandi and a compromise, which was marked as 'A'. On the other hand, defendant(s) also examined the residents of the area and placed on record the Jamabandi and *akshjara*.

6. After appreciating the evidence of the parties, the trial court decreed the suit filed by the plaintiff. Aggrieved against the same, the defendant(s) preferred the appeal before the lower appellate court. However, the same was dismissed by the lower appellate court. Hence, the present appeal has been preferred by defendant No.1.

7. Arguing the case, learned counsel for the appellant has submitted that the passage in question is situated in the revenue khasra number owned by the defendant(s). There was a compromise. However, this passage was left by the defendant only for his own use so as to reach and take care of his agricultural land. Still further it is submitted by the counsel that all the witnesses examined by the defendant(s) have duly proved that the land is in the ownership of the defendant(s). It is further submitted that Bhim-PW-3; in his cross-examination; has admitted that there is no iron gate installed at the spot by the defendant(s). Still further the counsel has pointed out certain inconsistencies in the evidence of the plaintiff; qua the plot being within the *abadi* or outside the *abadi*.

8. Having heard learned counsel for the appellant and having perused the case file, this court does not find any substance in the argument raised by learned counsel for the appellant/defendant. It is not in dispute that the plaintiff is the owner in possession of the plot mentioned in the suit. Even the site plan is not disputed as such. It is also not disputed that the defendant(s) are co-sharer in the land comprised in Khasra No.20/11. Still further this is not in dispute that there exists a street from main public passage to the plot of the respondent/plaintiff. The only dispute is that the plaintiff claims that this passage was left for common usage by the predecessor-in-interest of the plaintiff, as well as, for the defendant(s). Whereas, the defendant(s) have claimed that the street in question is their exclusive holding and was left only for the purpose of his own use for looking after their agricultural land. In view of this, the lower appellate court has rightly relied upon the testimony of Roshni Devi-PW-2; from whom the plaintiff had purchased

the said plot. It has been stated by her that the street in question was carved out for common use as per the compromise effected between her ancestors and ancestors of the defendants. Same is the testimony of the other witnesses examined by the plaintiff. The lower appellate court has also rightly relied upon the fact that; in the cross-examination; even suggestion was not given to this witness by the defendant(s) that no compromise was effected for leaving the common street, or that street was not carved out in view of the said compromise. Therefore, this reflects upon the inherent and reverse admission of the defendant(s) qua the compromise under which the ancestors of the defendant(s) and that the predecessor-in-interest of the plaintiff had left this passage. This court finds itself in agreement with the above said finding recorded by the court below.

9. One more fact, which has come on record, and has rightly been appreciated by the courts below, is that although the defendant(s) tried to set up a case that the passage in question was left by the defendant(s) only for the purpose of looking after their agricultural land, however, the evidence brought on record, categorically shows that there is no agricultural land in the area. This has also come in evidence that this street is surrounded by houses on three sides. Therefore, this is already a populated area. The street is being used by all the residents having their houses on this street. Therefore, there is no force in the argument of the defendant(s) that the street in question was left for use for looking after the agricultural land.

10. Although, learned counsel for the defendant has submitted that the witnesses of the defendant(s) have proved that the land is situated

in khasra No.20/11, in which the defendant(s) is also owner, however, this testimony is not having any specific relevance qua the street. It is not even disputed by anybody that the defendant No.1 is co-sharer in the above said khasra number. However, the basis for claim upon the common street by the plaintiff is the compromise; which was arrived at between the forefathers of the defendants and the predecessor-in-interest of the plaintiff, even before the plot was purchased by the plaintiff. Hence, there is no contradiction between two facts, namely, the defendant being co-sharer in khasra No.20/11 and the street being left for usage for all the residents of the area, including the plaintiff.

11. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant before this court.

12. Hence, this court does not find any illegality or irregularity in the concurrent findings recorded by the courts below.

13. In view of the above, finding no merit in the present appeal, the same is dismissed.

11th FEBRUARY, 2020
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>