

S.No.107

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

**RSA No.2446 of 2018 (O&M)
Date of Decision:02.03.2020**

Jang Singh Appellant

Vs.

Harjit Kaur Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.S. Swaich, Advocate, for the appellant.

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the plaintiff; challenging the concurrent findings, the judgments and the decrees passed by the Courts below, in a suit filed by him for a permanent injunction restraining the respondents from encroaching upon a passage, which was described in the plaint.

For convenience, the parties hereinafter would be referred to as the plaintiff and the defendant, as they were described in the original suit.

Shorn off unnecessary details, the facts involved in the present appeal are that the appellant/ plaintiff had filed a suit alleging that the plaintiff and defendant were the co-sharers in the land comprised in Khewat No.49/66, Khasra No.43(3-11), 36(4-0), 37(2-16) along with other co-sharers. The plaintiff and defendant were in separate cultivating possession, although the said land was recorded as joint in revenue records. The plaintiff had constructed his house in Khasra No.43; by leaving a passage for approach to other joint land of the parties. The defendant had filed a

partition case and the partition was effected by keeping the possession of the parties intact. As per the partition, the shares of the plaintiff and the defendant were separated. Accordingly, new khasra numbers were curved out and allotted to the plaintiff as well as, to the defendant. On the eastern side of Khasra No.43/1 allotted to the plaintiff, which is the abovesaid house of the plaintiff, there exists a passage which is being used by the plaintiff and the others. In this passage, door and window of the house of the plaintiff opens. Now the defendant want to encroach upon the said passage by raising construction. Hence, the suit was filed.

Upon notice, the defendant resisted the claim of the plaintiff. It was not denied that earlier the holding was joint between the parties. However, it was asserted that the same was partitioned amongst the co-sharers. The defendant had also purchased 3 bighas of land out of the joint holding from Gursimran Singh and he had put the defendant in possession over the land which was in his possession. At that time, the boundaries of the property were clearly mentioned in the sale deed. The partition between the parties was completed by the Assistant Collector First Grade, Kharar vide order dated 30.09.2013. In that partition proceedings, Khasra Nos.36/2, 37/2, 43/2 and 43 "ARA" were allotted to the defendant and he is in separate possession of these khasra numbers. There is no common passage left in Khasra No.43 "ARA", rather the same is part of the exclusive holding of the defendants. The plaintiff already had a passage towards the southern side of his land. The plaintiff has no right to claim any passage in the land of the defendant, which has not been left as any passage as per the order of the partition.

To prove their respective claims, the parties led their evidence. In evidence, the plaintiff himself appeared as the witness and no other witness was examined. Not even any other document was placed on record. On the other hand, the defendant examined her husband as DW1. Besides this, all the documents regarding the partition and the holding of the parties were placed on record. After hearing the parties, the trial Court dismissed the suit filed by the plaintiff. Aggrieved against the same, the plaintiff preferred appeal before the Lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the plaintiff. Hence, the present second appeal has been preferred by him.

Arguing the case, learned counsel for the plaintiff/ appellant has submitted that the partition has not even disputed by the defendant. The defendant herself has placed on record a site plan Ex.D4. Not only this, the defendant has also admitted in cross-examination that it was agreed during the partition proceedings that wherever the passage is existing, the same shall be maintained. Therefore, since the passage in question was existing before partition and continued even after partition, therefore, the plaintiff has every right to use the same. The defendant has no right to close the said passage.

Having heard the learned counsel and having perused the file, this Court does not find any substance in the argument of learned counsel for the appellant. It is not even disputed that before partition, the holdings were joint between the plaintiff and the defendant. Therefore, who was using which part of the holding, as passage, was totally immaterial. The existence of any passage before the partition proceedings loses any

significance as such. The fact remains that the joint holdings have been duly partitioned between the parties through the order of the Assistant Collector. In those partition proceedings, the plaintiff and the defendant have duly been given separate passages and specific areas mentioned in khasra numbers allotted to them. The partition proceedings do not show any passage as carved out during the partition proceedings, at the place, where the plaintiff is claiming the passage to be in existence after partition. Rather this part of the holding has been allotted exclusively to the defendant. Therefore, even if the defendant continue to use the said area as passage after partition proceedings as well, that, by no means, would give any right to the plaintiff to use the said passage. Since the area of the passage forms part of the exclusive holding of the defendant, therefore, the plaintiff cannot claim any right, title or the interest in the land, which might be used by the defendant as passage for her exclusive use. The defendant may or may not keep this area as passage, as per her choice now.

Otherwise also, on record, the plaintiff has not led any evidence whatsoever. Except examining himself, no other evidence has been led. Not even the site-plan, is produced by him. Therefore, the plaintiff has abjectly failed to prove the existence of any common passage at the spot. Needless to say that the plaintiff being master of his case, was required to prove his case, as per his evidence. The plaintiff has to stand on his own legs. He cannot even take advantage of any weakness in the evidence of the defendant, particularly, when the evidence led by the defendant, otherwise also, shows that the land of the alleged passage is her exclusive holding allotted to her during the partition proceedings.

No other argument was raised.

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

March 02, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No