

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

RSA No.4851 of 2017 (O&M)
DATE OF DECISION : 12th MARCH, 2020

Ranbir Singh & others

.... Appellants

Versus

Balbir Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Aditya Jain, Advocate and
 Mr. Rajat Garg, Advocate for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the second appeal filed by the unsuccessful plaintiffs, challenging the concurrent judgments and decrees, passed by the courts below, whereby; the suit filed by the plaintiffs for seeking injunction against the defendants against closing an alleged passage, has been dismissed.

2. For the convenience, the parties are being referred to hereinafter, as the plaintiffs and the defendants; as they were described in the original suit.

3. The brief facts, leading to the present appeal, are that the plaintiffs had filed a suit for permanent injunction with assertion that they are the residents of the area Shanti Nagar and Om Nagar for the last 30-40 years. Since then they have been using the suit land as passage. There also exist the water supply line and sewer line under that passage, which was shown by letters ABCD in the site plan. Still further it was

asserted that the passage connects Shanti Nagar Colony with National Highway No.8 and with Shivaji Nagar. However, on 24.06.2008 the defendants had started collecting building material near the passage, so as to block the same by raising construction. When the plaintiffs requested the defendants not to close the same, the defendants replied that the said passage was part of Khewat No.99, Rectangle No.45, Killa No.6, 7, 10 and 11, which was their private holding. The plaintiffs appeared before the higher authorities also, however to no effect. Accordingly, the suit was filed.

4. Disputing the assertions of the plaintiffs, the defendants filed written statements, asserting broadly, that there exists no passage as claimed by the plaintiffs. The land, which is described to be the passage by the plaintiffs is their private holding; which is duly recorded in the revenue records, as such. Still further it was asserted that earlier the Municipal Corporation, Gurugram had tried to claim ownership over the said alleged passage, therefore, the defendant No.1 had filed a civil suit No.143 on 01.02.1991. The same was decreed in favour of defendant No.1 on 21.12.1996, and the Municipal Corporation was restrained from interfering with the possession of defendant No.1, who was the plaintiff in that suit. Still further, it was asserted that the plaintiffs have not impleaded necessary parties in the case. Although, they were claiming the land to be a public passage, and thus vested in the Municipal Corporation, Gurugram, however, the Municipal Corporation had not been impleaded as party.

5. The parties led their respective evidence to make attempt to substantiate their respective cases. The plaintiffs examined four PWs and

11 documents were placed on record. The defendants examined 8 witnesses and placed on record 25 documents. After hearing the parties and appreciating the evidence, the trial court dismissed the suit filed by the plaintiffs. Feeling aggrieved against the same, the plaintiffs preferred the appeal before the lower appellate court. However, even the said appeal has been dismissed by the lower appellate court. Hence, the present appeal has been preferred.

6. Arguing the case, learned counsel for the appellants has submitted that since the plaintiffs have been using the passage for a long time, therefore, this itself shows the existence of the passage at the relevant place. Still further, it is submitted by the counsel that the earlier judgments and decrees dated 21.12.1996 passed in civil suit filed by the defendant No.1 are not binding upon the plaintiffs of the present case, because they were not party to the said suit. Still further, it is submitted that the fact that the sewer line and the water-supply line have been laid underneath the land/rasta, shows that there exists a public passage.

7. Having heard the counsel for the appellants and having perused the case file, this court does not find any substance in the arguments of the counsel for the appellant. Undisputedly, the suit property is a subject matter of the revenue records. The revenue records do not show existence of any passage at the place claimed by the plaintiffs. Rather, the records show the said land to be the exclusive holding of the defendant No.1, part of which might have been sold to some other persons, as well, subsequently. Still further, this fact has also been confirmed by the report of the Local Commissioner, which has been placed on record as Exhibit D-3, that there exists no passage/rasta either

in the revenue record or physically on the ground, and that even the Municipal Corporation is not recorded as owner of the suit property anywhere. Hence, the courts below have rightly come to the conclusion that existence of the passage at the place, has not been established by the plaintiffs by any cogent evidence.

8. Still further, the courts below have also appreciated the evidence qua the existence of the earlier decree passed in the suit filed by the defendant No.1 against the Municipal Corporation, Gurugram. The courts below have recorded a finding that in that suit also, the question; as to whether the suit property is a public passage or private holding of the defendant No.1 herein, was involved and the same was specifically decided in favour of the defendant No.1 herein, who was the plaintiff in that suit. Thereafter, not even any appeal was filed by any person in that suit. Hence, the said finding has also become final. In the present suit also, although the plaintiffs claim the land to be vested in the Municipal Corporation, Gurugram, however the Municipal Corporation has not been impleaded as party. This is also fatal to the suit of the plaintiffs. Had the plaintiffs impleaded the Municipal Corporation as a party in the present suit, both the sides would have been in a position to extract the relevant information qua their cases. However, the plaintiffs have not impleaded Municipal Corporation as a party to the suit, which appears to be out of fear that their claim qua the existence of the passage at the spot might be demolished altogether; on account of the Municipal Corporation failing to prove on record that the land of the passage vests in them; or that there exists a passage at the spot. On this point also, this court does not find any illegality or perversity in the findings recorded by the courts below.

9. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant.

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

12th MARCH, 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>