

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5401 of 2018 (O&M)
Date of decision: 16.01.2020

Parkash Kaur

... Appellant

versus

Parvesh Kumar Bedi & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Parminder Singh Kanwar, Advocate,
for the appellant.

ARUN MONGA, J.

1. Defendant in the original suit has suffered concurrent findings of facts of trial Court as well as first Appellate Court below, leading to the filing of present regular second appeal.

2. The plaintiff/ respondent had approached the trial Court seeking permanent injunction restraining defendant No.1 therein from creating any obstruction in the passage marked as ABCD and shown in red in the site plan attached with the plaint and for mandatory injunction directing defendant No.2 to remove the construction raised by her over the passage marked as CDEF in yellow in the site plan.

3. The parties to the suit are residing in close vicinity of each other being in the same neighborhood. Their husbands are brothers. The parties to the suit along with one Chand Rani purchased land measuring 34 *kanals* 22 *marlas* and occupied different parts of land as per mutual convenience and thereafter constructed their residential houses on the same.

Dispute arose with regard to the passage leading to the house of the plaintiff restraining the relationship between the parties.

4. Upon notice, defendant No.1 in her written statement disputed the site plan of plaintiff, wherein the passage has been shown as mark ABCD and CDEF. Defendant No.2 appeared in person and suffered statement that she does not wish to contest the suit and to that extend the findings qua her and the consequent decree passed has attained finality. The appeal has been filed only by defendant No.1.

5. The contesting parties adduced their oral as well as documentary evidence in support of pleadings. The trial Court decreed the suit and restrained the defendant(appellant herein) from creating any obstruction in the passage marked ABCD, whereas defendant No.2 was directed to remove the constructions raised by her over the passage marked as CDEF. The appeal filed by defendant No.1 was dismissed by the first Appellate Court below, leading to the filing of instant regular second appeal.

6. I have heard learned counsel for the appellant and have gone through the paper-book carefully.

7. In course of cross-examination, defendant No.1 virtually admitted the case regarding passage having been left out of the joint land purchased by the parties so as to allow her unhindered access to her house. That apart, existence of passage is also established from *aksh shijra* (Ex.P3) which reflects that existing of passsage was provided during consolidation of the land. In the premise I find that the appeal filed by appellant-defendant No.1. Parkash Kaur is bereft of any merit and does not deserve any interference in the findings of the trial Court, as have been rightly affirmed

by the Appellate Court.

8. Another aspect that deserves to be noticed is that there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is called for to disturb the concurrent findings of facts recorded by the Courts below.

9. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

10. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

11. Pending applications stand disposed of.

12. No order as to costs.

(ARUN MONGA)
JUDGE

January 16, 2020

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Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No