

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

RSA-6003-2018 (O&M)
Date of decision : 13.02.2020

Balwant Singh

...Appellant

Versus

Sandeep Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Himani Kapila, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.2-appellant has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for permanent injunction filed by the plaintiffs.

Caption of the suit filed by the plaintiffs-respondents reads as under:-

“Suit for permanent injunction restraining the defendants from interfering in the possession of the Plaintiffs or dispossessing the Plaintiffs from the land mentioned in Schedule (A) given below and demolishing or dismantling or blocking any part or portion of the passage as sanctioned in Schedule (B) below illegality, forcibly and in any manner whatsoever.

Schedule:-

(A) Land measuring 7 kanals 16 marlas bearing khasra

number 10R/12/2 as mentioned in the copy of the Jamabandi for the year 2007-2008 and as situated at Village Tananiwal, Had Bast no. 59, Tehsil Batala, District Gurdaspur.

(B) Land measuring 1 kanal 14 marlas bearing khasra numbers 5R/19/1/3, 22/2, 10R/12/1, 18/1, 18/2, 19/2, khewat no. 28, khatauni no. 67 as mentioned in the copy of the Jamabandi for the year 2007-08 and as situated at Village Tananiwal, Had Bast no.59, Tehsil Batala, District Gurdaspur.”

The plaintiffs claimed that the property in Schedule (A) is owned and possessed by them whereas the property described in Schedule (B) is a passage.

The defendants contested the suit by pleading that the legal heirs of Surjan Singh had sold the suit land in favour of defendant No.2, his son and wife.

Both the Courts, on appreciation of evidence, have concurrently found that the plaintiffs have successfully proved their case. With regard to the property in Schedule (A), learned First Appellate Court has noticed in para 17 that learned counsel for the appellant admitted that the defendants have no concern with the land described in Schedule (A). Para 17 of the judgment is extracted as under:-

*“17. The learned counsel for the appellant/ defendant no.2 while assailing the impugned judgment and decree in the lines of grounds of appeal has argued that admittedly there is no dispute leading to the present lis qua the suit land as detailed in the schedule A of the head note of the plaint that **the defendants have no concern with that land.** However, regarding the suit land as detailed in schedule B of the head*

note of the plaint, the plaintiffs have failed to prove their any right, title or interest qua that suit land as detailed in schedule B of the head note of the plaint. The plaintiffs to prove their pleadings have to stand on their own legs. They cannot take the benefit of weak evidence of the defendants or no evidence of the defendants. The plaintiffs have to prove their suit in affirmative manner. In the instant litigation, the plaintiffs have failed to prove that the suit land as detailed in the schedule B of the head note of the plaint is passage to the land of the plaintiffs. The learned trial court has given significance to the cross examination of Jagir Singh DW-1 and has ignored the cross examination of the witnesses of the plaintiffs. It is settled principles of law that claiming assess over a passage requires long easement right by way of prescription not as a right of necessity. The plaintiffs have not led an iota of evidence that the so called claiming passage is their easmentary right by prescription. In fact, the suit land as detailed in schedule B of the head note of the plaint has already been purchased by defendant no.2 Balwant Singh alongwith his wife and sons and accordingly, revenue record is in their favour. The learned trial court has wrongly ignored that the revenue record of the suit land as detailed and described in schedule B of the head note of the plaint. The relief of permanent injunction as claimed by the plaintiffs has become infructuous regarding the land as detailed and described in schedule A of the head note of the plaint as it is admission of the defendants that admittedly they have no concern of the land measuring 7 kanals 16 marlas as detailed in schedule A of the head note of the plaint. Further, the plaintiffs have failed to prove their right qua suit land as detailed in schedule B of the head note of the plaint. Therefore, as a whole, the plaintiffs are not entitled to the relief of permanent

injunction qua the suit land of schedule A and B as detailed in the head note of the plaint. The learned trial court has not assessed the pleadings of the parties and evidence thereto in a judicious manner. Though the plaintiffs have claimed their right, title or interest regarding the suit land as detailed in the schedule B of the head note of the plaint on the basis of partition proceedings of another land appurtenant to the land of schedule B. No such right can be accrued by way of partition proceedings of another land that too as an easmentary right.”

With respect to the property covered by Schedule (B), it may be noted that on partition of the property, the mutation was sanctioned wherein it was recorded that the property under Schedule (B) has been kept as *gair mumkin* passage. The defendants have failed to prove that the aforesaid partition of the property was either erroneous or any way illegal. Document Ex.P2 also proves that the property covered by Schedule (B) is *gair mumkin* passage. Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

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

13.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No