

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

RSA-1452-2021 (O&M)

Date of decision: 03.12.2021

Ram Mehar

....Appellant

Versus

Ram Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.R.Hooda, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

Defendant no.1 assails the correctness of the judgment and decree passed by both the courts below. The plaintiff (respondent herein) filed a suit for the grant of decree of mandatory injunction with a consequential relief of permanent injunction. He claims that he is an exclusive owner in possession of plot no.12 and defendant no.1 and 2 want to merge street no.4 (common area) in plot no.11 owned by the defendant no.1. The defendant denied the existence of any common area.

On the appreciation of the evidence, particularly, the record of the consolidation of holdings, the court held that such area is a common area and defendant no.1 has no right to occupy the same or merge the same portion in his plot.

Learned counsel representing the appellant contends that the jurisdiction of the civil court is barred in deciding a question of such nature. He submits that only the Collector, under the Punjab Village Common Lands (Regulation) Act, 1961, has the jurisdiction, to decide the question. This Court has considered the submission made by the

learned counsel representing the appellant.

On a court question, learned counsel representing the appellant admits that no such objection was ever taken before the courts below. Furthermore, it is evident from the issues framed by the learned trial court on 24.04.2015, which are extracted as under, that there was no issue on the question of title:-

“1. Whether the plaintiff is entitled to relief for mandatory injunction as prayed for? OPP.

2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP.

3. Whether the suit is not maintainable in the present form? OPD.

4. Whether the suit of plaintiff is liable to be rejected under Order 7 Rule 11 CPC. OPD.

5. Relief.”

Both the courts have merely granted injunction in order to preserve the land assigned for common use of the residents. The appellant has failed to draw the attention of the Court to any evidence, which may prove that he has any right, title or interest in the property.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

03.12.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE