

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

RSA No.5753 of 2019 (O&M)

Date of Decision : 25.03.2022

Nanak Chand & Ors.

....Appellants

VERSUS

Chhida Lal & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Alok, Advocate for the appellants.

ALKA SARIN, J.

Heard in virtual mode.

CM-16479-2019

This is an application for condonation of 228 days delay in re-filing the present regular second appeal.

For the reasons mention in the application the same is allowed.

Delay in re-filing the present regular second appeal is condoned.

CM-16480-2019

This is an application for condonation of 75 days delay in filing the present regular second appeal.

For the reasons mention in the application the same is allowed.

Delay in filing the present regular second appeal is condoned.

RSA No.5753 of 2019

The defendant-appellants are in second appeal against the decisions by both the Courts below whereby the suit of the plaintiff-respondent No.1 for mandatory injunction has been decreed. The appellants were defendant Nos.1, 3 and 4 before the Trial Court, respondent No.1 was

the plaintiff while respondent Nos.2 and 3 were defendant Nos.2 and 5. The parties are hereinafter referred to as their status was before the Trial Court.

The facts in brief are that according to the plaintiff the path in dispute in Khasra No.96, 97 is in existence for the last more than 60 years and is being maintained by defendant No.5 (Gram Panchayat of village Mandawar) from grants sanctioned by the Government. It was averred that the path in dispute is meant for common purposes and the doors, windows, ventilators of the house of the plaintiff open towards the path in dispute which is also being used by the plaintiff for ingress and egress to his house. The plaintiff approached the Trial Court averring that the defendants had forcibly raised construction over a portion 12' x 6' in front of his house and blocked the door of the house of the plaintiff. The plaintiff sent complaints to the DSP South Gurugram and other functionaries but no action was taken and the defendants refused to dismantle the impugned construction made over the path in dispute. Thus, the suit for mandatory injunction was filed for directing defendant Nos.1 to 4 for removing the impugned construction.

The defendant Nos.1 to 4 filed a joint written statement wherein they admitted the existence of the path in dispute and the houses of the parties as described in site plan Ex.P1. Defendant Nos.1 to 4 however claimed exclusive rights over the path in dispute claiming it being their personal property carved out by them from their land in Khasra No.96. Defendant Nos.1 to 4 denied that the path in dispute was meant for common purposes or was maintained by defendant No.5 (Gram Panchayat of village Mandawar). Defendant No.5 (Gram Panchayat of village Mandawar) in its written statement supported the case set-up by the plaintiff claiming that the path in dispute was in existence since inception of the village and is meant

for common purposes for the villagers for ingress and egress and that defendant No.5 (Gram Panchayat of village Mandawar) is maintaining the path in dispute as well as the drainage system and it is under its control. Defendant No.5 (Gram Panchayat of village Mandawar) also questioned the right of the defendant Nos.1 to 4 in raising the impugned construction.

The following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to the relief of injunction as prayed for by him with respect to the disputed property on the grounds as mentioned in the plaint?OPP
2. Whether the plaintiff has got no *locus standi* and cause of action to file the present suit?OPD
3. Whether the present suit is not maintainable ?OPD
4. Relief.

Both sides led their respective evidence and after appraisal of the same the Trial Court decided issue no.1 in favour of the plaintiff. The defendants did not press issue nos.2 and 3 which were decided against them. Vide judgement and decree dated 17.11.2016 the Trial Court decreed the suit of the plaintiff and directed defendant Nos.1 to 4 to remove the construction closing the door of the house of the plaintiff within two months failing which the plaintiff was held entitled to get the said construction removed through the process of the Court. The defendant Nos.1, 3 and 4 filed an appeal against the decision by the Trial Court. However, vide judgement and decree dated 31.08.2018 the Lower Appellate Court dismissed the appeal. Hence, this regular second appeal by the defendant Nos.1, 3 and 4.

The counsel for the defendant Nos.1, 3 and 4 has contended that the judgements passed by the Courts below are illegal and erroneous inasmuch as the path in dispute is private property having been carved out

from their Khasra No.96. Counsel for the defendant Nos.1, 3 and 4 has argued that the Courts below have erroneously held that the path in dispute was not a private path and granted the mandatory injunction in favour of the plaintiff. According to him, the path in dispute was not meant for common purposes and was not maintained by defendant No.5 (Gram Panchayat of village Mandawar) and that the defendants had full rights to raise construction on their own land.

Heard learned counsel for the defendant Nos.1, 3 and 4/appellants.

The Courts below, after discussing the evidence produced by the parties, found that as per the demarcation report, Ex.PW3/A, the path in dispute is a '*rasta aam*' and is also mentioned in the site plan of the *abadi deh* of the village, Ex.P-AB. Further, defendant No.3 in his cross-examination admitted that the path in dispute is being used by the inhabitants of the village for ingress and egress. The demarcation was done on 12.03.2011 in the presence of the parties who expressed their satisfaction over the points established at the spot by the revenue official. The defendants have not produced any evidence to establish and prove that the path in dispute was carved from their land in Khasra No.96 and was their private passage. Even before this Court the learned counsel for the defendant Nos.1, 3 and 4 has been unable to point out anything on the record establishing the ownership of the defendants over the path in dispute or that it was a private passage. In the absence of any cogent and convincing evidence, this Court is unable to accept the contentions made by the counsel for defendant Nos.1, 3 and 4.

In view of the discussion above, the defendant Nos.1, 3 and 4 have failed to make out a case for this Court to interfere with the concurrent findings of fact recorded by both the Courts below. No question of law, much less any substantial question of law, arises for determination by this Court in the present case. The present appeal, being without any merit, is dismissed.

Dismissed. Pending applications, if any, also stand disposed off.

25.03.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO