

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

RSA-3948-2019 (O&M)

Date of decision: 22.11.2022

Pawandeep Singh and another

...Appellants

Versus

Yadwinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. B.S. Sewak, Advocate for
Mr. D.S. Randhawa, Advocate for the appellants.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Pawandeep Singh son of Jagvir Singh and Dalvir Singh son of Buta Singh, both residents of Ajitsar Nagar, Mandi Mullanpur Dakha, District Ludhiana had brought a suit against defendant Yadwinder Singh of their area seeking a declaration that they are owners in possession in equal shares in property measuring 1K-11M situated at Village Jangpur, Tehsil & District Ludhiana on the basis of sale deed dated 18.01.2011 besides seeking a decree for permanent injunction restraining the defendant from laying sewerage connection and passing the pipes tank through the suit property and from interfering in peaceful possession of the plaintiffs over the suit property.

2. In the suit, the plaintiffs contended that defendant who is their close relative has been residing in the property shown in green

colour in the site plan attached with the plaint and this property abuts the land purchased by the plaintiffs. The defendant had made temporary waterway in the suit property without consent of previous owners. After purchasing the land, the plaintiffs requested the defendant to close the waterway existing in the suit property but defendant did not do so, rather in the month of October 2013, when the plaintiffs tried to raise construction in the suit property, then defendant came to the spot and obstructed the plaintiffs from raising any construction, alleging that the suit property is a common passage. The plaintiffs had reported the matter to the police but to no result. According to the plaintiffs, the defendant has no concern with the suit property since main gate of house of defendant is abutting the main road. On 20.04.2014, the defendant had tried to put sewerage pipes in the suit property, which compelled the plaintiffs to file the suit in question.

3. On notice, the defendant appeared and filed written statement, contesting the suit raising various legal objections. On merits, contending that the relief of permanent injunction sought by the plaintiffs has become infructuous since the defendant had already laid sewerage pipes making construction of tank in the suit property. According to the answering defendant, the property in question shown in red colour is a common passage of the parties and the defendant has every right to use the same. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

4. Plaintiffs filed replication controverting the allegations in the

written statement, reiterating the averments in the plaint.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

- (1) Whether the plaintiffs are entitled to decree of declaration as prayed for ? OPP
- (2) Whether plaintiffs are entitled to decree of permanent injunction as prayed for ? OPP
- (3) Whether suit of plaintiffs is not maintainable? OPD
- (4) Whether no cause of action has accrued to the plaintiffs against the defendant to file the present suit? OPD
- (5) Whether the plaintiff has not come to this Court with clean hands and concealed true and material facts from this Court? OPD
- (6) Relief.

6. During the course of evidence, plaintiff Pawandeep Singh appeared in the witness box as PW-1. The plaintiffs also examined PW-2 Anil Narula in support of their claim. The plaintiffs relied upon several documents also. In rebuttal, the defendant himself appeared in the witness box as DW2 and repeated on oath his case as given in the written statement. He further examined DW-1 Raghbir Malhotra official from PNB Bank. The defendant after tendering documents closed his evidence.

7. After hearing arguments, the trial Court decided issues No.1 to 4 against the plaintiffs and in favour of the defendant whereas issue No.5 become redundant, vide judgment dt. 23.05.2017. Resultantly, the suit of the plaintiffs was dismissed with costs.

8. Feeling aggrieved, the plaintiffs had preferred an appeal

before District Judge, Ludhiana, which appeal was assigned to Addl. District Judge, Ludhiana, who vide judgment and decree dated 07.05.2019 also dismissed the same, leaving the plaintiffs aggrieved and they have knocked at the door of this Court by way of filing the present Regular Second Appeal.

9. I have heard learned counsel for the appellant/plaintiffs besides going through the record.

10. The trial Court on proper analysis of the pleadings, evidence, admission by the plaintiffs and settled legal position concluded that the suit land is in fact an open passage and in the site plans proved in evidence by plaintiffs as Ex.PA and P3, plaintiffs themselves have mentioned that the suit property shown in red colour is an open passage. There is reference to cross-examination of plaintiff Pawandeep Singh appearing as PW-1 wherein he had admitted that there is recital in the sale deed dt. 18.01.2011 to the effect that on the eastern side of the property, there is a passage abutting the property of defendant. He further admitted that the defendant had filed a civil suit against Kartar Singh claiming that the property shown in red colour is a public passage. He had admitted that the suit property in red colour is shown as a common passage in the site plans. The trial Court had concluded that property shown in red colour is a common passage and its existence had been admitted by the plaintiffs themselves. The plaintiffs have rather failed to prove their ownership over the suit land measuring 1K-11M since photocopy of the sale deed dt. 18.01.2011 remains unproved on record. Resultantly, the suit

of the plaintiffs had been dismissed.

The plaintiffs had filed an appeal challenging the impugned judgment and decree. However, learned Addl. District Judge, Ludhiana had also arrived at the similar conclusion as drawn by the trial Court. Learned Addl. District Judge, Ludhiana agreed that the findings recorded by the trial Court that the disputed site is a passage adjoining to the house of defendant and plaintiffs are in possession of house which is situated behind that passage. It has further been observed that as per jamabandi, the plaintiffs are not owners in possession of land measuring 1K-11M and as per revenue record also, the land under the passage is neither ownership nor in possession of the plaintiffs. With such concurrent findings having been recorded by the Courts below, which are based upon proper appraisal of evidence and correct interpretation of law, I do not see any reason to differ with the trial Court and Ist Appellate Court with regard to the conclusion that the site in dispute is a common passage and it does not vest in the plaintiffs.

11. The appeal filed by the plaintiffs challenging such judgments is absolutely without merit. I do not see any reason to proceed further. No substantial question of law or fact is involved in this case. The appeal stands dismissed accordingly.

22.11.2022
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No