

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

RSA-1414-1991 (O&M)

Reserved on: 19.01.2023

Date of pronouncement: 27.01.2023

Malook Singh and others

...Appellants

Versus

Fauja Singh and others

...Respondents

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

Present: Mr. Amit Jain, Sr. Advocate with  
Mr. Varun Parkash, Advocate for the appellants.

Mr. Naresh Prabhakar, Advocate for the respondents.

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**H.S. MADAAN, J.**

Briefly stated facts of the case are that plaintiff Dalip Singh had brought a suit against defendants Fauja Singh and his wife Simro, both residents of Village Mandkula, Sub Tehsil Bholath, District Kapurthala, seeking grant of permanent injunction, restraining the defendants from using any space as passage on the eastern side of the house of plaintiff or making any encroachment therein in any manner in house bearing No.79 measuring 0K-9M situated in abadi of Village Mandkula.

As per case of the plaintiff, he had purchased the house in question from Jagir Singh son of Amar Singh, vide sale deed dated 14.08.1985. The defendants wanted to purchase that house but they could not do so, as such, they started creating problems for the plaintiff

by making attempts to make a passage on the eastern side of the house in question and threatening to encroach some space there for their house, to which they have no right. The defendants had their property on the northern and eastern side of the house in dispute to which they have got access. Feeling aggrieved by such behaviour of defendants, the plaintiff brought the suit in question.

2. On notice, the defendants appeared and filed a written statement, contesting the suit, contending that the house in occupation of the plaintiff and defendant No.1 has got no opening of door towards the western street. There is 5 ½ feet wide street, which towards eastern side of plot No.79. Some part of plot No.80 abuts that. There is a street 5 ½ feet wide through plot No.81 adjoining the main street. The water of the houses No.78 and 79 flows through the passage in plot No.79. According to the defendants, the sale deed executed by Jagir Singh in favour of the plaintiff is not genuine, rather it is a fake document without consideration. The suit property is an evacuee property and when Muslims left India, plots No.78 to 81 were allotted to the persons coming to that village in the year 1947 and they had been using the street in dispute as it was existing at the time of Muslims before partition. The defendants are using the passage for their house No.78 ever since they came from west Pakistan to the village in the year 1947 and there was no other passage to their house, in that way, the defendants have got right of easement by prescription. The plaintiff

had entered into an agreement with Jagir Singh on 31.05.1979 in which the passage was mentioned. According to the defendants, the water from house of plaintiff also flows in the passage and there is no other passage to house of defendants and the house occupied by the plaintiff. Plots No.82 and 83 were earlier owned by Manga from whom Fauja Singh defendant had purchased the same. There is a wall between house in plot No. 78 and plots No.82 and 83. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed:-

1. *Whether the passage in dispute is in existence since 38 to 39 years as alleged and the defendant has acquired a right of easement in it as alleged? OPD.*
2. *Whether the plaintiff is owner in possession of the site in dispute? OPP*
3. *Whether the plaintiff is entitled to the injunction prayed for? OPD*
4. *Relief.*

4. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Senior Sub Judge, Kapurthala, vide judgment and decree dated 08.10.1988, dismissed the suit of plaintiff with costs.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff had preferred an appeal before District Judge, Kapurthala, however, that appeal was dismissed, vide judgment dated 10.01.1991

7. Still feeling dissatisfied, the plaintiff has knocked at the

door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/defendants who have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record/

9. Here both the Courts below, in the light of pleadings of the parties, on deep and thorough analysis of the evidence adduced by them, in view of the settled legal position, have returned concurrent findings that though the plaintiff is owner of the property in dispute but defendants have acquired the right of user of the passage in dispute through plot No.79 by way of prescription. In that way, the plaintiff was not found entitled to grant of decree for permanent injunction restraining the defendants from using any space as passage on the eastern side of the house of the plaintiff.

10. The impugned judgments are quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. No illegality or infirmity therein is found to be there. There is no ground to interfere with the impugned judgments and decrees by exercising the power in Regular Second Appeal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

27.01.2023  
*sumit.k*

(H.S. MADAAN)  
JUDGE

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