

RSA-4130-2011(O&M) &
RSA-4518-2011(O&M)

-1-

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

(1) RSA-4130-2011(O&M)

Jagdish Singh

...Appellant

Versus

Sardool Singh @ Sahurat Singh alias Suhrid Singh

...Respondent

(2) RSA-4518-2011(O&M)

Sardool Singh @ Sahurat Singh alias Suhrid Singh

...Appellant

Versus

Jagdish Singh

...Respondent

Reserved on:-20.3.2023

Date of Pronouncement:-28.3.2023

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

Present: Mr.Sunil Chadha, Sr.Advocate with
Mr.B.S. Seemar, Advocate and
Mr.Tara Dutt, Advocate
for the appellant in RSA-4130-2011 and
for respondent in RSA-4518-2011.

Mr.Arvind Kashyap, Advocate
for the appellant in RSA-4518-2011
for respondent in RSA-4130-2011.

H.S. MADAAN, J.

1. Vide this order I shall dispose of two regular second appeals i.e. RSA-4130-2011 and RSA-4518-2011.

2. Briefly stated, facts of the case are that plaintiff Sardool Singh @ Sahurat Singh alias Suhrid Singh son of Rajinder Singh, resident of village Sanauli, Tehsil Rajpura, District Patiala had brought a suit against his father – Rajinder Singh and brother Jagdish Singh, both residents of Chandigarh, seeking a declaration that the land shown by letters ABCDEFGH is a passage belonging to the defendants leading to the agricultural land of the plaintiff besides craving for grant of permanent injunction restraining the defendants from interfering in the peaceful use and enjoyment of that passage by the plaintiff.

3. As per the version of the plaintiff, he is owner in possession of land measuring 50 bighas 3 biswas comprised in Khasra Nos.313, 314, 323, 324, 33, 334, 344, 285 to 289, 345 situated at village Sanauli; the plaintiff and defendants have a joint khewat and are co-sharers in joint khata since the year 1954; the plaintiff has been cultivating the entire land and to reach the same, the passage in dispute could be used because it is the only access to

his land, which is situated on the back side; the passage in question was provided to the plaintiff to enable him to reach the PAHI; this passage is a natural contour and is higher in level than the other land, so the parties by mutual consent had kept this portion of land as a passage to the land of the plaintiff; however, the defendants in order to harass the plaintiff had manipulated the mutation No.824 dated 27.4.1978 and report roznamcha without following any procedure and without written consent and signatures of the plaintiff through Assistant Collector IInd Grade, Dera Bassi, depriving him of his legal share out of the joint property; the plaintiff had been using the passage in dispute as of right and as an easement in order to reach the fields from the PAHI since the year 1954; defendant No.1 who is also general attorney of defendant No.2 tried to obstruct the peaceful use and enjoyment of passage by the plaintiff by ploughing the same, giving rise to a cause of action to the plaintiff to bring the suit in question.

4. On getting notice, the defendants appeared and filed written statement admitting that plaintiff and defendants had a joint khewat earlier measuring 150 bighas 8 biswas. As per the stand taken by the defendants, the parties are in cultivating possession of the same since 27.4.1978; it was partitioned with mutual consent and mutation No.824 was sanctioned in that regard on 27.4.1978; the defendant No.1 has installed his tubewell in khasra No.327/1 besides

constructing a kotha therein with which the plaintiff has no concern; as a matter of fact, he is no more co-sharer in the land after the partition as mentioned supra; no passage is in existence at the spot as alleged by the plaintiff, rather it is joint land of defendants and is in their cultivating possession; no cause of action arose to the plaintiff to bring the suit and he had done so just to cause harassment to the defendants. The defendants prayed for dismissal of the suit.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the suit of the plaintiff is barred by limitation? OPD.
5. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD.
6. Relief.

An additional issue was also framed on 27.7.2000, which

is as under:

2-A Whether the partition took place in accordance with law and passage in dispute was carved out at the time of partition or the same was in existence at the time of partition? OPP.

7. Both the parties led evidence in respect of their claims.

The case was finally decided by Civil Judge(Jr.Divn.), Rajpura vide judgment and decree dated 3.10.1997. However on an appeal having been filed, the Appellate Court remanded the case vide judgment dated 7.3.1998 with a direction to give opportunity to the parties to lead evidence on additional issues framed by it and to pass fresh judgment. The Appellate Court had framed the following additional issues:

5-A Whether the plaintiff has acquired a easement by prescription to use the passage in dispute and whether in the alternative he has got an easement by necessity to use the passage in dispute? OPP.

5-B Whether the site in dispute is passage and has been used as such by the plaintiff since 1954? OPP.

8. On receipt of the case after remand, the trial Court permitted the parties to lead evidence as per direction issued by the Appellate Court and then after hearing arguments, vide judgment and

decree dated 6.1.2001 dismissed the suit filed by the plaintiff.

9. The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 22.3.2011 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff to the extent that there exists a passage as depicted in the site plan attached with the report of the Local Commissioner dated 29.5.2001. Accordingly, defendants were restrained from interfering in the peaceful use of the passage by the plaintiff as depicted in the site plan attached to the report of Local Commissioner dated 29.5.2001. However, the findings with regard to partition having already taken place was affirmed.

10. However, both the parties felt dissatisfied with the judgment and decree passed by the First Appellate Court of Additional District Judge, Patiala and have filed separate appeals, notice of which was issued to the respective respondents, who have put in appearance through counsel.

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

12. I find that the trial Court by proper appraisal of evidence brought on record by the parties had arrived at the proper and appropriate conclusion that partition had since been effected between

the parties and mutation No.824 on its basis had been sanctioned and a report No.366 dated 16.4.1978 had been entered in the report roznamcha, copy Ex.D12. In terms of the jamabandi for the year 1990-91 Ex.D6 Rajinder Singh defendant is shown to be in exclusive possession as owner of specific khasra numbers, which had been allocated to him during partition on the basis of report in the report roznamcha, copy Ex.D12. Similarly documents Ex.D7 to Ex.D11 reflect the separate ownership and possession of the parties over specific khasra numbers, on the basis of the said partition. Although the plaintiff had denied that such partition had taken place but his presence at the time of recording of report in the roznamcha is specifically recorded as well as that of defendant No.1 Rajinder Singh for himself and as attorney of his son Jagdish Singh defendant No.2. That report was entered on the basis of private partition, which had been carried out by the parties as a result of which land measuring 50 bighas 3 biswas came to share of Rajinder Singh, 50 bighas, 2 biswas to share of defendant No.2 and land measuring 50 bighas 3 biswas to the share of the plaintiff.

13. With regard to the existence of the passage, the trial Court had rightly observed that this passage is no where reflected in any of the revenue document like jamabandi, khasra girdawari or for that matter in shajra aks/latha. There is no mention in the roznamcha regarding any passage having been left through land of defendants,

for use of the plaintiff as approach to the chunk of land allotted to him during partition. Thus the stand of the plaintiff that land has not been formally partitioned stood nullified.

14. However, the First Appellate Court of Additional District Judge, Patiala by ignoring the cogent and convincing evidence brought on record by the defendants showing absence of any passage, went on to rely upon the oral evidence as well as report by Local Commissioner so as to come to the conclusion that such passage is there. It is a clear case of misappraisal of evidence and wrong interpretation of law. The law is well settled that documentary evidence takes precedence over the oral evidence and revenue record is best type of evidence to see the ownership and possession of the land bearing khasra numbers as well as existence of any passage therein. When no such passage is reflected in the revenue record giving undue importance to report of Local Commissioner, who goes to the spot for a short time and with possibility of his susceptibility for giving a wrong report being there, the First Appellate Court was not justified in placing too much reliance upon the report of the Local Commissioner while drawing an inference that such passage was actually there at the spot being used by the plaintiff and while saying so ignoring overwhelming cogent and convincing evidence to the contrary available on the record.

15. Learned counsel for the appellant has stated that the

partition has become final since order passed in that regard had been affirmed by Financial Commissioner Revenue Punjab vide order dated 10.8.2022, copy of which has been placed on record and an application been filed on behalf of the appellant to produce it by way of additional evidence.

16. Learned counsel for the respondent has not disputed this fact though stating that an application for review filed by the respondent/plaintiff is still pending.

17. The First Appellate Court was not justified in upsetting the judgment and decree passed by the trial Court. The judgment passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge, Patiala. That wrong is being undone by acceptance of the present appeal.

18. Resultantly the judgment and decree passed by Additional District Judge, Patiala are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiff are restored.

19. The appeal RSA-4130-2011 stands allowed accordingly with costs. Whereas RSA-4518-2011 filed by the appellant for reversing finding on issue No.2A by the Courts below is dismissed.

Since the appeal RSA-4130-2011 is allowed and RSA-4518-

RSA-4130-2011(O&M) &
RSA-4518-2011(O&M) -10-

2011 stands dismissed, the miscellaneous application(s), if any, stand
disposed of accordingly.

28.3.2023 (H.S.MADAAN)
Brij JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No