

RSA-1276-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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RSA-1276-2020 (O&M)  
Decided on : 17.08.2023

Jabar Khan

. . . Appellant(s)

Versus

Jassu @ Jasmal Khan and others

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Rakesh Kumar Sharma, Advocate  
for the appellant(s).

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**SANJAY VASHISTH, J. (Oral)**

**CM-3825-C-2020**

For the reasons set out in the application, the same is allowed.  
Consequently, the delay of 95 days in re-filing the accompanying appeal is  
hereby condoned.

Civil Miscellaneous application stands disposed of.

**CM-3826-C-2020**

Allowed as prayed for.

**RSA-1276-2020 (O&M)**

1. Present Regular Second Appeal (RSA), has been filed by  
defendant No.1 (appellant herein) against the concurrent finding of decretal  
of suit, filed by the plaintiffs (respondents No.1 & 2 herein), seeking a  
decree of mandatory and permanent injunction.

2. As per the pleadings in the suit, *Gair Mumkin Rasta* No.227,  
available for ingress and outgress to the house of the plaintiffs, has been  
encroached upon by defendants No.1 to 4. Said encroachment is based upon  
the demarcation reports proved on record, showing the encroachment on the

rasta by all the four defendants.

3. In the written statement filed by defendants No.1 to 3, it was submitted that rasta in question is *Panchayat Deh*, and has been used by all inhabitants, and there is no encroachment done by the answering defendants, rather, encroachment has been done by the plaintiff.

Defendant No.4 – Arif, took a different stand that he is satisfied with the Government demarcation and will remove the illegal possession, if any. Subsequently, defendant No.4, was proceeded against *ex-parte*. Similarly, defendant No.2 – Deena, also took a stand that he too is satisfied with the demarcation report, and is also ready to remove the illegal possession of Khasra No.484, and in this regard, he placed on record an affidavit also. Subsequently, defendant No.2 failed to appear before the Court, and was accordingly proceeded against *ex-parte*. Defendant No.5 i.e. Gram Panchayat, was also proceeded against *ex-parte*.

4. After the pleadings of all the concerned parties, learned Trial Court vide order dated 19.05.2015, framed the following issues:-

- “1. Whether the plaintiffs are entitled to a decree for Mandatory Injunction as prayed for? OPP
2. Whether the plaintiffs are entitled to a decree for Permanent Injunction as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus standi and cause of action to file this suit? OPD
5. Whether the plaintiffs are estopped by their acts, conduct and acquiescence to file the present suit? OPD
6. Relief.”

5. Issues No.1 & 2, were interconnected, thus, same had been taken up together, and para No.17 of the trial Court judgment is the

concluding part.

6. Relying upon the demarcation reports, learned Trial Court found that there is encroachment done by all the four defendants over the *Gair Mumkin rasta*. Observing so, Trial Court noticed the conduct of defendant No.1 – Jabar Khan (appellant in the present appeal), that as per judgment dated 30.05.2016 (Ex.P5) passed in a Civil Suit, titled as, “Jabar Khan Versus Gram Panchayat”, wherein, plaintiff sought a decree of permanent injunction against the Gram Panchayat, regarding his Khewat No.493, Khatoni No.568, Khasra No.494 (0-6), measuring 0K-6M, suit was dismissed by the Trial Court and perusal of that judgment shows that demarcation report (Ex.P16), which was tendered in that case as Ex.PW3/A to Ex.PW3/E, defendant No.1 – Jabar Khan, was found in illegal possession of 12 sq. yards of land of Rasta No.227. There was another demarcation report (Ex.P7), dated 11.10.2015 (Ex.D1 in the earlier case), in which defendant No.1 – Jabar Khan, was found in illegal possession of 13 sq. yards of land. Said demarcation was done on the application of defendant No.1 – Jabar Khan himself. Thus, giving a fact finding, suit was decreed by the learned Trial Court.

7. In the first appeal also, after examining the complete material before it, the First Appellate Court, found that defendants No.1 to 4 are on the wrong side of the law, being encroachers on the passage in dispute, which as per the revenue record, is owned by Gram Panchayat, Village Sarai.

8. After hearing learned counsel for the appellant/defendant No.1, and carefully going through the impugned judgments & decrees of the learned Courts below, this Court does not find any substance to differentiate with the findings given by the learned Courts below.

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Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decrees passed by the learned Courts below. Accordingly, finding of facts given by the learned Courts below are maintained. Present appeal stands **dismissed** accordingly.

Pending civil miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)  
JUDGE

**August 17, 2023**

*J.Ram*

*Whether speaking/reasoned:*      *Yes/No*

*Whether Reportable:*                *Yes/No*