

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

RSA-1005-2018 (O&M)
Date of decision: 18.01.2023

GURMAIL SINGH ...Appellant
VS
GURDEV SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Atul Kaushik, Advocate,
For the appellant.

Mr. R.S.Dadwal, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two
Courts below, the plaintiff is in second appeal before this Court
assailing the trial Court judgment and decree dated 06.01.2015, as
upheld by learned First Appellate Court vide its judgment and decree
dated 08.09.2017.

3. Plaintiff filed the suit for grant of mandatory injunction
seeking direction to defendants to restore the passage 11' in width and
71'-6" in length after demolition of the wall, Varandah and staircase
etc. erected in front of the room of plaintiff illegally and forcibly by
defendants because of which ingress and egress from the southern side
of the house owned by plaintiff for approach to village Sath property

has been totally blocked as shown in red colour in the site plan and bounded as East: Bhajan Singh, West: Passage, North: property of plaintiff, South: Village Sath property situated at Village Rupa Patti, Tehsil Raikot, District Ludhiana and also directing that the defendants should not commit any act of omission or commission which may be detrimental to rights to plaintiff; on the basis of oral and documentary evidence.

4. Briefly stated, facts as noticed by Courts below are that Sajjan Singh, father of plaintiff and defendant No.1 owned property, as detailed in para No.1 of the plaint, which had been given to plaintiff and defendant No.1 who were residing therein alongwith families in separate portions. Plaintiff had also purchased 12/17th share approximately towards northern side and 5/17th share towards southern side was purchased by Shri Sajjan Singh, father of plaintiff and defendant No.1 vide registered sale deed dated 4.8.1983 which abuts the plot already owned by Sajjan Singh. The entire area of Khasra No.33 as such became 1 Kanal 04 Marlas, out of which plaintiff became joint owner to the extent of 12/17th share.

4.1. Further, as per his version on 11.9.1987, both plaintiff and defendant No.1 agreed to keep and maintain passage of two Karam width on eastern side of the plot for ingress and egress to village Sath property situated on southern side and it was agreed specifically on that day that both the plaintiff and defendant No.1 shall place doors and windows etc. of their respective houses. Secondly, Shri Sajjan Singh also owned motor with electricity connection No. RP-2-19 which was

also given to both plaintiff and defendants in equal shares. The memo of settlement was also arrived at between the parties and same was scribed and duly signed by plaintiff and defendant No.1 and also attested by the witnesses.

4.2. After that settlement, plaintiff as well as his family members and defendants continued using the passage for access to village Sath property on the southern side without any hindrance or objection for many years. In the year 1991-92 plaintiff renovated the building and further raised construction on the northern side and old construction was demolished. Then plaintiff called his father and brother Gurdev Singh defendant No.1 and expressed his desire to allow him to merge the site of passage $10\frac{3}{4} \times 2$ Karams in his residential portion and they both agreed to the proposal. Plaintiff left area of One karam width and 8 karam at the site from east to west to defendant No.1, which has been separately shown in site plan in blue colour. Accordingly, plaintiff raised construction in front of the passage with door opening in the passage on southern side.

4.3. After that, up till month of April-2008, plaintiff continuously used that passage without any obstruction or hindrance and when plaintiff returned in April-2008 from Canada and stayed for five/four months and went back. When he again returned to village in November- 2009, he was shocked to notice that defendants had raised a wall approximately 11 feet wide in front of his door opening leaving a space of 2'4" and closed the 11 feet wide passage illegally and forcibly, to which they have no right or concern whatsoever.

5. Upon notice, defendants No.1 to 3 filed detailed written statement contesting the claim of the plaintiff by taking preliminary objections that the suit of the plaintiff is not maintainable; is time barred and no cause of action arose to the plaintiff against defendants.

5.1. On merits, it has been admitted that it was agreed on 11.09.1987 that both plaintiff and defendant No.1 shall place doors and windows etc. of their respective houses in the passage and that the memo of settlement was executed in writing. Further it is pleaded that the plaintiff has not mentioned the other facts which came into existence later on.

5.2. In the year 1991-92, it was settled between plaintiff and defendant No.1 that both the brothers will cover the passage which abutted to their plots respectively and that both plaintiff and defendant No.1 will merge this Rasta into their plot/residential house. Accordingly, both plaintiff and defendant No.1 merged this Rasta in equal shares into their respective properties and further raised constructions over this Rasta also along with the construction of their residential houses over their respective plots that had come to their share. The plaintiff has passage on the two sides of his property i.e., on the northern and western side, while defendant No.1 has the passage on two sides of the property i.e., on the western and southern side.

5.3. It has been further averred by defendants that the Rasta merged into the plot and the construction over it, not only by way of adverse possession, but also on the basis of writing dated 11.09.1987 as well as on the basis of the oral partition settlement. Now the plaintiff

has no concern/relation with the plot of defendant No.1 including one half Rasta merged into the plot and the construction thereon carried out by him.

6. Based on the rival pleadings, following issues were framed:
- “1. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP*
 2. *Whether the suit of the plaintiff is not maintainable?OPD*
 3. *Whether the suit filed by the plaintiff is time barred? OPD*
 4. *Whether the plaintiff has got no cause of action to file the present suit?OPD*
 5. *Relief.”*

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid.*

8. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2 were decided against plaintiff and in favour of defendants. Issues No.3 and 4 were decided against defendants and in favour of plaintiff. Consequently, the suit of plaintiff was dismissed by the trial Court.

9. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal by plaintiff before this Court.

10. In its judgment, the learned First Appellate Court, *inter alia*, observed as below:

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“14. As discussed above, first of all it was the duty of the plaintiff/appellant to prove his version by way of leading cogent and convincing evidence and he has

to stand upon his own legs. He cannot take the benefit of weaknesses of the defence. So far relationship amongst the parties to the lis is concerned, that is admitted. Similarly, the execution of settlement dated 11.09.1987 amongst the parties qua suit property is also admitted by both the parties and same is Mark A on the file and as entry of the same has also been made in the register of scribe/deed writer and that entry has been proved on file as Ex.P1. In that way, settlement deed of 11.9.1987 was very vital document in order to decide the controversy involved in the present lis.

15. It is important to mention over here before proceeding further that the original settlement/writing dated 11.9.1987 has not been produced / proved on file by the plaintiff/appellant for the reason best known to him. As the above mentioned settlement / writing dated 11.9.1987 has also been admitted by the opposite party,i.e., respondent entry of which is Ex.P1 in the register of deed writer, from its perusal it reveals that a common passage was left as per that settlement by both the parties,i.e., plaintiff and defendant No.1 on the eastern side of both the plots of plaintiff and defendant No.1 and as per that settlement both the parties agreed to open their windows as well as their doors towards that passage.

16. Now the bone of contention amongst the parties is regarding the fact that plaintiff/appellant as discussed above alleged specifically that in the year, 1991-92 he expressed his desire to allow him to merge the site of passage into his residential portion before his father and brother Gurdev Singh defendant No.1 which has been accepted by them and in lieu of that he provided 1 Karam wide and 8 karam site from east to west to defendant No.1 which has been shown in blue colour in the site plan Ex.P2. As the plaintiff/appellant has so alleged, due to that reason onus was heavily upon his shoulders to prove that fact by way of leading cogent and convincing evidence but from the evidence led by plaintiff / appellant oral as well as documentary, I am of the considered opinion that plaintiff miserably failed to prove that fact. From the bare perusal of site plan of plaintiff/appellant which is Ex.P2 on the file, it reveals that the portion which has been shown in blue colour in the site plan in measurement is very small

that of area of passage which he has allegedly covered of the common rasta in lieu of that blue portion. It is difficult to digest the above mentioned version of plaintiff/appellant that defendant No.1 and his father agreed to give a larger area of common passage to the plaintiff/appellant just in lieu of a very small area shown in blue colour in the site plan Ex.P2. Apart from that, as discussed above, there is no evidence on the file on the part of plaintiff/appellant regarding above mentioned settlement which allegedly effected in the year, 1991-92 whereas on the other hand from the evidence led by both the parties the contention of contesting defendants/respondents seems to be genuine one rather because as per their version in the year, 1991-92 as per oral compromise settlement between plaintiff and defendant No.1 both the brothers agreed to cover the passage which abutted to their respective plots and accordingly as per that settlement they have covered the respective area of the passage abutting to their plots in the year, 1991-92 itself.

17. It is important to mention over here that it is not the case of plaintiff/appellant that passage in question is the only passage for the purpose of ingress and outgress to his house, rather from the site plan of plaintiff Ex.P2, it is crystal clear that plot owned and possessed by him abuts to two passages; i.e. Passage on the northern as well as on the western side. This fact is also admitted by PW4 Gurmail Singh while stepping into witness box.

18. So from the above mentioned details discussion of mine, it is crystal clear that plaintiff/appellant miserably failed to prove his version as alleged in the plaint before the learned trial Court and learned trial Court rightly appreciated the evidence led by both the parties and committed no error as alleged by plaintiff/appellant and no interference of this court is required at all. Accordingly, the appeal being devoid of any merits is ordered to be dismissed with costs.”

11. I have heard the learned counsel for the parties and perused the judgments of both the Courts below.

12. Briefly stated, the grounds urged in this second regular appeal are that it is the admitted case of the parties that easementary rights of light,

air, and approach to the house have the appellant was blocked by encroaching upon the disputed passage; that the Building expert had given his expert evidence to the effect that the wall raised by the defendants looks newly constructed and that the wall has been forcibly constructed in front of the plaintiff's door, leaving a space of 2'-4" by closing the 11' wide passage.

13. The appeal does not show if the plaintiff had pleaded he had no other approach to his house and /or had no other source for adequate light and air for his house except from the site of the disputed passage. The judgments of the learned trial Court as also of the learned First Appellate Court do not show if, as contended herein, that it was the admitted case of the parties that easementary rights of light, air, and approach to the house have the appellant was blocked by encroaching upon the disputed passage. Rather their perusal clearly shows that besides the disputed passage, the parties had also access to their respective houses from other sides also and that by agreement between themselves, they had merged the parts of the passage in dispute in their respective properties. The age of the wall constructed on the passage area by the defendant seems immaterial when by agreement the parties had had merged the parts of the passage in between their respective properties. I, therefore, find no merit in the aforesaid contentions raised in the instant appeal. The same are rejected.

14. On perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined

to agree. I also find no substance in the submissions that the impugned judgments are based on conjectures and surmises.

15. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

16. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

17. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

18. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

19. Pending application/s, if any, shall also stand disposed of.

20. No order as to costs.

(ARUN MONGA)
JUDGE

18.01.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No