

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-393 of 1994 (O&M)
Date of Order:05.04.2024

Baljinder Singh and another

.Appellant

Versus

Hardip Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sukhdip Singh Brar, Advocate
for the appellant.**

**Mr. Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Vidul Kapoor, Advocate
for the respondent.**

ANIL KSHETARPAL, J

1. This is the defendant's regular second appeal challenging the correctness of the judgment and decree passed by the First Appellate Court while reversing the judgment and decree passed by the trial court.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed

3. The plaintiff after purchasing a plot measuring 7½ marlas vide registered sale dated 21.12.1984, from Sh. Joginder Singh, filed a suit for grant of permanent injunction that he wants to raise boundary wall around the disputed plot for security purpose, however, the defendant is obstructing in construction of the wall though he has no right.

3. The defendant while filing the written statement claimed that Sh. Joginder Singh was not the owner of the property and the site in dispute is a public street.

4. The trial court dismissed the suit, however, the First Appellate

Court reversed the findings on account of the following reasons:-

- (1) DW2-Ranjit Singh examined by the defendant has categorically admitted that the plot in dispute and the house of the defendant adjoins each other and there is no street in between the plot of the plaintiff and the defendant.
- (2) DW2-Dhanna Singh while appearing in evidence has admitted that he prepared the layout plan on the instructions of defendant and he never checked at the spot regularly.
- (3) In a proceeding under Section 133 Cr.P.C, the Patwari prepared a layout plan, Ex.PW4/1, in which existence of street is not reflected.
- (4) No office bearer of the Gram Panchayat has been examined to prove that there was any street.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellant submits that the plaintiff has failed to prove that his vendor was owner of the property.

7. This court has considered the submissions of the learned counsel representing the parties.

8. In this case the dispute is with regard to existence of street in between the plot of the plaintiff and the defendant.

9. The defendant is not claiming any right, title or interest over the plot in question except existence of street. In these circumstances, the pivotal issue which requires adjudication is “whether there is any street in

between the house of the plaintiff and the defendant?”

10. As already noticed, the defendant has alleged existence of street, however, he has failed to prove the same.
11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
12. Dismissed.
13. All the pending miscellaneous applications, if any, are also disposed of.

April 05, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO