

2025:PHHC:037884



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

RSA-369-1999 (O&M)
Reserved on : 07.03.2025
Pronounced on : 20.03.2025

JATTU RAM (DECEASED) THR LRS AND ANR.Appellants

VERSUS

MILAWA RAM AND ANR.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. C.M. Munjal, Advocate for the appellants.

Mr. Sandeep Jasuja, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 07.08.1998 passed by the First Appellate Court reversing the judgment and decree dated 23.11.1996 passed by the learned Trial Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondents, who are father and sons, are residents of Village Panchanwali wherein the defendant-appellants also reside. The houses of the plaintiff-respondents and the defendant-appellants adjoin each other. The case set up by the plaintiff-respondents was that there is a street 11 feet wide shown in red colour in the site plan (Ex.PW-4/A) which has been there since the time the Village came into existence. It was further the case that the street was brick paved about 15 to 20 years ago and a drain was constructed to drain out the rain water and used water of the houses. Five to six feet of the street could not

be brick paved because the material fell short. Subsequently, the Gram Panchayat passed a resolution to brick pave that portion of the street also. It was further the case of the plaintiff-respondents that they had been using the street for ingress and egress to their houses. However, the defendant-appellants were causing obstacles. It was further averred in the plaint that the defendant-appellants had blocked the street three and a half years ago. With the intervention of the respectables of the village, better sense prevailed over them and they gave an undertaking that they would not block the street and since the defendant-respondents were again blocking the street, hence the suit. It was also the case set up that the defendant-appellants had filed a Civil Suit titled 'Jattu Ram V/s Desh Raj' wherein the plaintiff-respondents had become a party and contested the stay application, which was dismissed on 08.02.1994.

3. The defendant-appellants contested the suit averring in the written statement that the street starts from the house of Pannu Ram and ends at the houses of the defendant-appellants and does not extend beyond their houses. It was averred that the plaintiff-respondents have a separate passage through the *phirni* on which the gate of their house opens. It was denied that the site in dispute was a street. It was further the case that the street upto their houses was big and that the Sarpanch, in connivance with the Police, got the defendant-appellants arrested and that their thumb impressions were obtained by the Police and Raje Ram, Sarpanch on blank paper, which was converted to an affidavit later.

4. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

5. On the basis of the pleading of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP

2. Relief.

6. The Trial Court vide judgment and decree dated 23.11.1996 dismissed the suit. The First Appellate Court vide the judgment and decree dated 07.08.1998 allowed the appeal of the plaintiff-respondents and decreed the suit. Hence, the present regular second appeal by the defendant-appellants.

7. The learned counsel for the defendant-appellants would contend that the First Appellate Court has erred in reversing the well-considered judgment of the Trial Court and that reliance on the document (Ex.P-1) by the First Appellate Court to decree the suit filed by the plaintiff-respondents was wholly misplaced.

8. *Per contra*, the learned counsel for the plaintiff-respondents has contended that besides Ex.P-1, there was cogent evidence on the record to prove the fact that the site in question was a street.

9. I have heard the learned counsel.

10. In the present case the First Appellate Court, while allowing the appeal, had found that the door of the house of the plaintiff-respondents opened on the said street. It further held that had it been a courtyard, the defendant-appellants would not have allowed the plaintiff-respondents to

open their door on the street. The First Appellate Court further returned a finding that the defendant-appellant himself – Jattu Ram – admitted in his cross-examination that the Panchayat had filed an application against him under Section 133 to remove the obstructions created by him in the street. He admitted having appeared in the Court. He, however, denied any order of removal being passed by the SDO Civil (SDM, Fazilka). He, however, admitted having filed an appeal before the Sessions Judge, Ferozepur against the order of the SDO Civil, Fazilka. A civil suit was also filed by the defendant-appellants for permanent injunction in which the plaintiff-respondents had got impleaded as a party and the injunction application was dismissed. An appeal was also preferred by the defendant-appellants.

11. The plaintiff-respondents by way of cogent evidence had proved on the record that the street had been brick paved by the Panchayat. Infact, there were electricity poles on the street qua which it has come in evidence that the electricity charges were being paid by the Panchayat. Further, Ex.P-1 which is the writing thumb marked by Jattu Ram (the defendant-appellant No.1) admitting the existence of the street in the presence of witnesses has been signed by as many as five respectable persons including two Ex-Sarpanches, namely, Lakha Ram and Desh Raj; Sarpanch, namely, Raje Ram and Panches, namely, Milki Raj and Manga Ram, which was later attested by the Oath Commissioner. In view of the above, the arguments raised by the learned counsel for the defendant-appellants cannot be accepted. In the face of the findings returned by the First Appellate Court, there is no scope for interference by this Court. No credible and reliable evidence has been

highlighted by the learned counsel for the defendant-appellants for this Court to take a contrary view from the one taken by the First Appellate Court. In view thereof, no fault can be found with the findings returned by the First Appellate Court. No other point was argued.

12. In view of the above, I do not find any merit in the present regular second appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No