

**(2010) 09 P&H CK 0409**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 3248 of 2010 (O and M)

Dalip Singh

APPELLANT

Vs

Bharat Singh and Another

RESPONDENT

**Date of Decision:** Sept. 15, 2010

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

L.N. Mittal, J.

C.M. No. 9542-C of 2010:

1. For reasons mentioned in the application, delay of 26 days in re-filing the appeal is condoned.

C.M. No. 9543-C of 2010:

2. Allowed as prayed for.

Main Appeal:

3. Dalip Singh - defendant No. 1 has filed the instant second appeal having lost in both the courts below.

4. Parties are brothers. Bharat Singh - respondent No. 1 filed the suit against Dalip Singh appellant as defendant No. 1 and against Rishal Singh respondent No. 2 as proforma defendant No. 2. The plaintiff's case is that there is joint street/passage of the parties, on which houses of the parties abut, but defendant No. 1 intended to close the said passage by installing gate. Accordingly, the plaintiff sought permanent injunction restraining defendant No. 1 from blocking the passage in question by installing gate and from making any obstruction in the said passage.

5. Defendant No. 2 supported the claim of the plaintiff.

6. Defendant No. 1 contested the suit and pleaded that there is no thorough passage, as alleged by the plaintiff. It was pleaded that the disputed passage is a private passage of defendant No. 1. He claimed it to be his private property, in which gates had already been installed. Plaintiff and proforma defendant No. 2 have no right to use the said passage.

7. Learned Civil Judge (Junior Division), Mohindergarh, vide judgment and decree dated 14.06.2008, decreed the suit. First appeal preferred by defendant No. 1 stands dismissed by learned Additional District Judge, Narnaul vide judgment and decree dated 28.04.2010. Feeling aggrieved, defendant No. 1 has preferred the instant second appeal.

8. I have heard learned Counsel for the appellant and perused the case file.

9. Learned Counsel for the appellant vehemently contended that there is no documentary evidence to prove that there was any family settlement regarding the disputed passage being joint passage of the parties. The contention is misconceived and distorted one. Sale deed dated 29.11.2005, vide which defendant No. 1 purchased some land, reveals that the disputed joint passage is in existence at the spot on west of the land purchased by defendant No. 1 himself. Thus, document of defendant No. 1 himself reveals and proves the existence of the disputed passage. In view of said sale deed, it cannot be said that the disputed passage is private property of defendant No. 1. On the other hand, the said passage is joint passage of the parties. Admittedly, houses of plaintiff and defendant No. 2 also abut on the said passage. The plaintiff has nowhere pleaded that disputed passage was left as joint passage in any family settlement and consequently, the question of leading any evidence regarding any family settlement in this regard did not arise.

10. Learned Counsel for the appellant also contended that the plaintiff also admitted in the witness-box that there is also another passage for his house. However, mere existence of another passage for the house of the plaintiff does not entitle the appellant - defendant No. 1 to block the disputed passage, which is also meant for being used by plaintiff and proforma defendant No. 2 along with appellant - defendant No. 1 as well.

11. Learned Counsel for the appellant also contended that the suit was instituted on 11.03.2006 and Local Commissioner visited the spot on 13.03.2006 and found the two gates of defendant No. 1 in existence on the spot. However, if defendant No. 1 hurriedly installed the gates at the spot, it would in no way depict that the suit property is private property of defendant No. 1. On the other hand, sale deed dated 29.11.2005 of defendant No. 1 himself negatives this plea of defendant No. 1 and the said sale deed shows that the suit property is not private property of defendant No. 1 and is rather joint passage.

12. Both the courts below, after appreciation of evidence, have come to concurrent finding against defendant No. 1 appellant. The said finding is not shown to be

perverse or illegal in any manner so as to warrant interference in second appeal. Lower appellate court is the final court of fact. Decision of this case rests on finding of fact. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is found to be bereft of any merit and is accordingly dismissed in limine.