

**RSA-1844-2012 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****(212-1)****RSA-1844-2012 (O&M)
Date of decision:- 14.01.2025****SATNAM SINGH AND OTHERS****... APPELLANTS****Versus****KASHMIRI LAL****... RESPONDENT****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. I.S.Brar, Advocate for the appellants.

Mr. Anish Setia, Advocate,
Mr. Surinder Singh, Advocate and
Mr. Karan Diwan, Advocate for the respondent.

**********SUVIR SEHGAL, J. (ORAL)**

1. Assailing the finding recorded by the first appellate Court, defendants are before this Court in the instant second appeal.
2. Pleaded case of respondent-plaintiff is that he is exclusive owner of agricultural land in village Burj Kela, Teshil Phillaur, District Ludhiana and he has installed a tube-well as well as made some temporary construction. The passage to his land is through khasra No.17 and khasra No.24/1, which is a private passage and the defendants have no right over it. There was a litigation between the parties over the passage and with the intervention of the respectables, a settlement was arrived at on 01.07.2004, but the defendants did not comply with the terms of the compromise. Plaintiff was forced to sign some papers under police pressure on 03.12.2004. He filed a suit for mandatory injunction directing the defendants to execute the sale deed in terms of the compromise dated 01.07.2004 and for declaration to the effect that the



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compromise dated 03.12.2004 is illegal, null and void. In the alternative, he sought permanent injunction for restraining the defendants from using any portion of the private passage for the purpose of ingress and outgress. Upon notice, suit was contested by the defendants by filing a written statement, wherein, besides raising various preliminary objections, a stand was taken that the defendants have an easementary right of way by way of prescription through the passage. Defendants claimed that they have been using the passage in dispute for going to and coming from their agricultural land for the last more than 40 years and that the plaintiff has no right title or interest in khasra No.25, which is in the exclusive ownership of the defendants. Plaintiff filed replication to the written statement filed by the defendants and reasserted the pleas taken in the plaint. Following issues were framed on the basis of the pleadings of the parties:-

- “(i) Whether plaintiff is entitled to mandatory injunction prayed for? OPP*
- (ii) Whether plaintiff is entitled to declaration as prayed for? OPP*
- (iii) Whether plaintiff is entitled to permanent injunction prayed for? OPP*
- (iv) Whether plaintiff has no locus standi to file the present suit? OPD*
- (v) Whether suit in present form is not maintainable? OPD*
- (vi) Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD*
- (vii) Whether the plaintiff has not come to the court with clean hands? OPD*
- (viii) Whether the proper court fee has not been affixed? OPD*
- (ix) Relief.”*

3. Plaintiff stepped into the witness box as his own witness, as PW-1, and examined, Harjinder Pal and Ajmer Singh as PW-2 and PW-3, respectively, in his support. Defendants tendered copies of documents, Ex.D1



and Ex.D2 and closed his evidence. After contest, Trial Court by judgment and decree dated 20.11.2009 dismissed the suit. Plaintiff, preferred an appeal, which was accepted by the learned Additional District Judge, Jalandhar vide judgment and decree dated 06.03.2012. Trial Court judgment and decree was set aside and defendants were restrained from using any portion of the suit land as a passage for ingress and egress to their land. Defendants are in second appeal in the above backdrop.

4. As the dispute between the parties is regarding a passage, an attempt was made by this Court to resolve it through the medium of mediation, but it did not fructify.

5. Mr. I.S.Brar, counsel for the appellants has argued that the appellants have been using the passage in disputes since time long past as an approach to their agricultural land and that they have an easementary right, which cannot be taken away. He has made reference to the observations made by this Court in its order dated 28.07.2006, Annexure A-3.

6. On the other hand, Mr. Anish Setia, counsel for the respondent has urged that the appellants did not insist on this plea before the Courts below and cannot be permitted to rake it for the first time in the regular second appeal. He has supported the judgment and decree passed by the first appellate Court.

7. I have heard counsel for the parties and considered their respective submission, besides examining the requisitioned record with their able assistance.

8. The arguments of counsel for the appellants deserve to be rejected outrightly. Although, the appellants had taken a plea that they have been using the passage for the last four decades, but no issue was framed nor did the



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appellants urge the Trial Court to frame an issue sought by the defendants on this aspect. Appellants did not step into the witness box and did not lead any evidence to support this stand. The reliance placed upon order dated 13.08.2009, Ex.D1, passed by the learned Additional District Judge, Jalandhar on a miscellaneous application and the order dated 28.07.2006, Annexure A-3, passed by this Court would not help the appellants as these orders were passed while deciding the injunction application and application alleging violation of the injunction order. There is no iota of evidence on the record to support the plea of easementary right. Therefore, this plea cannot be accepted.

9. On the other hand, the respondent has led an unimpeachable ocular and documentary evidence to establish that they are the owners of the passage and are using a portion of khasra No.17 and 24/1 as a passage to their tube-well and constructed area. They have proved that the passage to their land is a private one and that the appellants have no right to use it. Appellants have rightly been restrained from using any portion of the said land as a passage. There is no illegality or infirmity in the judgment and decree passed by the first appellate Court, which is affirmed.

10. Finding no merit in the appeal, it is dismissed with no order as to costs.

11. As the main case has been decided, pending application(s) are disposed off.

(SUVIR SEHGAL)
JUDGE

14.01.2025
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No