



222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4383-2016 (O&M)

Date of decision : 14.05.2025

Manish Kumar

...Appellant

Vs.

Suresh Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumit Sangwan, Advocate
for the appellant.

Mr. Ram Avtar Sheoran, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

1. The plaintiff assails the correctness of concurrent findings of fact arrived at by the Courts below while dismissing his suit for grant of decree of permanent injunction restraining the defendant from interfering in his possession or installing a door towards the passage.

2. The suit property is located in residential area of the village (*lal lakeer*). As per the layout plan, the passage in question is the only passage available to the plaintiff. The house of defendant has two more openings towards north and east of his house. The passage is located towards west of house of the defendant. In fact, towards west of the street house of Sh. Ram Niwas is located, whereas, towards east of the passage, the house of the defendant is located. The plaintiff claims to be owner of the passage. He also relies upon an agreement executed on 24.05.2013 in the presence of the



respectables of the village, wherein, it was agreed that the defendant will not open his windows and gate towards this passage. In order to prove the same, the plaintiff examined PW4-Sh. Ashok Kumar, the then Sarpanch and PW5-Sh. Dharmbir, the Panch of the village.

3. Both the Courts have dismissed the suit on the ground that the plaintiff could not prove his exclusive ownership over the passage in dispute and there is no resolution of the Panchayat to this effect.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith requisitioned record.

5. Learned counsel representing the appellant while drawing the attention of the Court to layout plan and document Ex. P-14 submits that the Court has erred in dismissing the suit.

6. *Per contra*, learned counsel representing the respondent submits that the plaintiff cannot claim passage over the suit property and the plaintiff never amended the suit in order to seek closure of the opening door, which is in existence.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. Undoubtedly, the plaintiff cannot claim ownership in absence of document, however, he has right to restrain the defendant from opening any door and window, particularly, when the agreement dated 24.05.2013 is proved on record, which is signed by the defendant. Resolution of the Panchayat was not necessary for such settlement.

9. In substance, the agreement is to the effect that the defendant who



has two more openings towards the main street and he will not open any window or door towards the street.

10. The Courts have also erred in observing that there is discrepancy in the deposition of PW/5-Sh.Dharamvir. However, such discrepancy cannot be preferred in place of a document, which is signed by the parties. On careful reading of the plaint, it is evident that the plaintiff did make a specific prayer requesting the Court to issue direction to the defendant to close the door. Hence, the last argument of learned counsel representing the respondent lacks substance.

11. Consequently, the appeal is allowed to the extent that the defendant shall close his door. However, the plaintiff is not declared to be owner of the same but he will be entitled to use the same.

12. All the pending miscellaneous applications, if any, are also disposed of.

14.05.2025

neeraj

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No