



RSA-2915-2019 (O&M)

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

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RSA-2915-2019 (O&M)
Date of decision: 23.01.2025

Jarnail Singh and another

... Appellants

Vs.

Baljit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sherry K. Singla, Advocate
for the appellants.

SUVIR SEHGAL J.

1. Appellants-defendants are in second appeal before this Court challenging the concurrent findings recorded by two courts, whereby suit filed by the respondent-plaintiff for decree of permanent injunction restraining the defendants from constructing or opening any door, window or ventilator in the plot shown as ABCD in the site plan, has been accepted. Appeal is accompanied with an application for condonation of delay of 258 days in its filing.

2. Pleaded case of respondent-plaintiff is that he is the owner of the property, which has a 14 feet wide road leading from his

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residential house to the outhouse. It has been averred that on 08.01.1958, a private partition took place and land measuring 93 marlas, 3 sarashis was partitioned vide a memorandum of partition, whereunder a passage with 3 ½ karam width was left out for exclusive use of Satpal, Pritpal and Dalip Singh. Claiming to be the son of Dalip Singh, plaintiff has asserted that he has an exclusive right to use the passage. Gurjitpal Kaur, widow of Pritpal Singh, entered into an agreement with the plaintiff with regard to the passage. Asserting that the defendants have no right, title or interest in the private passage, plaintiff filed the suit, noticed above.

3. Upon notice, defendants No.1 and 2 filed a joint written statement resisting the suit by raising various preliminary objections. It was submitted that Jasvir Singh Dhaliwal, who is living abroad, is the owner in possession of the house shown in the site plan and is using private passage with his forefathers for the last 80 years. Denying the allegations, the defendants sought the dismissal of the suit. Plaintiff filed a replication to the written statement filed by the defendants controverting the stand taken by the respondents. Issues were framed on the basis of the pleadings of the parties, who led evidence in support of their respective case. After trial, by judgment dated 05.08.2016, trial Court decreed the suit and restrained the defendants from opening any door, window or ventilator in the private

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passage. Defendants remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Moga on 16.03.2018. Defendants have instituted the instant appeal in the above backdrop.

4. I have heard counsel for the appellants and considered his submissions besides examining the requisitioned record.

5. Plaintiff led evidence and proved the private partition dated 08.01.1958. He stepped into the witness box as his own witness and has established that the passage is his private property which was left out during the partition for the exclusive use of his father Dalip Singh, who has expired. Evidence shows that this passage connects the residential house of the plaintiff to the outhouse. Even the report of the Local Commissioner submitted on 19.09.2013 supports the version of the plaintiff and the contesting defendants did not file any objection to the report. Defendants No. 1 and 2 have not been able to impeach the evidence led by the respondent. Rather their stand is that Sh. Jasvir Singh Dhaliwal was owner of the private passage, however, Sh. Jasvir Singh Dhaliwal has not been examined by them. As the plaintiff is established as an owner of the passage, he is entitled to injunction against the said defendants, who do not have any right or title in the property. There is no illegality or infirmity in the judgments passed by both the courts, which are affirmed.

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6. Appeal being devoid of merits, is dismissed with no order as to costs.

7. As the appeal has been found to be meritless, application seeking condonation of delay in its filing will stand disposed off.

23.01.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

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