



RSA-580-2024 (O&M)

119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-580-2024 (O&M)
Date of decision : 19.09.2025

Piara Singh Appellant

Versus

Shangara Singh & ors. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Arpan Sabharwal, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

1 Defendant No.1 is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant No.1 and the respondent No.1 as plaintiff.

2 Plaintiff filed suit seeking decree of declaration to the effect that the plaintiff, defendants No.1 & 3 in family partition have been carved two karams wide passage from main passage through khasra No.17//11/1, 17//12 upto 17//13 vide agreement dated 12.06.2008 is valid. Further mandatory injunction was sought seeking direction to defendants No.1 & 2 to remove the encroachment caused by them over the said khasra numbers which caused hinderance in their passage.

3 The Court of the First Instance dismissed the suit filed by the plaintiff holding that agreement Exhibit P1 could not be proved. Plaintiff having failed to prove family partition Exhibit P1, he was not entitled to



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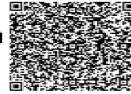
decree of declaration and the consequential relief of the mandatory injunction.

4 In the appeal preferred by the unsuccessful plaintiff, the findings stand reversed. Suit filed by the plaintiff stands decreed holding that since defendants came in possession on the strength of transfer deed executed in their favour by defendant No. 3 and the factum of their being a passage carved out has been incorporated in the transfer deed itself, the plaintiff is entitled to the relief claimed.

5 Learned counsel for the appellant has assailed the finding recorded by the Lower Appellate Court reversing the finding recorded by the Court of the First Instance. He contends that once the witnesses did not support the contents of Ex.P1, the same was not duly proved in terms of Section 68 of the Evidence Act, 1872 (for short 'the 1872 Act'). There being no corroborative piece of evidence to prove the factum of execution of Ex.P1, the Lower Appellate Court erred in decreeing the suit.

6 I have heard learned counsel for the appellant and have carefully gone through records of the case.

7 Suit of the plaintiff is based upon family settlement dated 12.06.2008. It has come on record that on 13.06.2008, defendant No.3 executed different transfer deeds including one in favour of defendant No.1 and the other in favour of plaintiff, whereby specific khasra numbers were transferred in favour of plaintiff and defendant No.3. Perusal of the transfer deed reveals that the factum of passage of 2 karams from Khasra No.12//21 leading up to Khasra No.12//22/2, finds mention in the same. Once the



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covenants as contained in agreement Ex. P1 stood manifested in the transfer deed on the strength of which defendant No.1- appellant claims title, the plea raised by counsel for the appellant with respect to lack of evidence to prove Ex.P1 cannot be accepted.

8 Ocular evidence cannot be looked into to dislodge the transfer deeds in terms of Section 91 and 92 of the 1872 Act.

9 In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

10 Pending miscellaneous application, if any, also stands disposed off.

19.09.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No