

2025.PHHC:171900



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

RSA-680-2008 (O&M)

Reserved on: 08.10.2025

Pronounced on: 10.12.2025

Date of upload: 12.12.2025

MOHINDER SINGH

.....Appellant

Versus

JASWANT KAUR AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Paramvir Singh, Advocate for the appellant.

Mr. Saurabh, Advocate for

Mr. M.S. Longia, Advocate for respondent Nos.1 and 2.

Mr. Munish Gupta, Advocate for respondent No.3.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 07.04.2005 and 30.10.2007 passed by the Courts below whereby, suit for mandatory injunction filed at the instance of appellant-plaintiff No.1 was dismissed by the Courts below.

2. Briefly stating, the appellant being plaintiff No.1 along with one Iqbal Singh filed a suit for mandatory injunction with the following prayer clause:-

“Suit for mandatory injunction directing the Defendants from removing the encroachment by demolishing the Bore and cutting guava trees planted in Rasta marked A. B. C. D. measuring 2 Gathas in width and 36 Gathas in length, carved out in Khewat / Khatauni 84/135, Khasra No. 10// 1min, as shown in site plan attached, situated in the area of villa,

Khairabad, HB No. 52, Tehsil and Distt. Ropar, as per fard Jamabandi for the year of 1988-89, vide agreement Deed dated 13-3-88, between the plaintiffs and defendant No. 1, and for recovery of Rs. 40000 / - i.e. Rs. 20,00%-for each of the plaintiffs for violation of mandatory conditions as laid down in the agreement Deed dated 13-3-1988.”

3. As per the plaint, appellant-plaintiff No.1 claimed himself to be owner in possession of land forming part of Khewat Khatauni No.89-141 Khasra Nos.10//9/2(3-18), and 10//9/6/1(4-0) in the area of Village Khairabad Hadbast No.62, Tehsil and District Ropar. It was further pleaded that plaintiff No.2, namely, Iqbal Singh owned land comprised in Khasra No.10/10 (8-0) whereas, respondent No.1-defendant No.1 owned land forming part of Khasra No.10// 1 min and 10//8/1.

4. Further, it was pleaded that all the aforementioned 3 parcels of land had no 'rasta' and accordingly, an agreement dated 13.03.1988 was executed between the parties whereby, a passage measuring 2 gathas in width and 36 gathas in length forming part of Khasra Nos. 10//1 min, 9/2 and 10 was left –carved out. The plaintiffs also pleaded that the aforementioned 'rasta' remained under utilization by the owners under the agreement dated 13.03.1988, however, some time back, respondent No.1-defendant No.1 transferred her land in favour of her son Kehar Singh-respondent No.2-defendant No.2 on 10.02.1995 and thereafter, he has got the entries in the revenue records changed as 'gair mumkin tubewell' and blocked the passage/rasta. Hence, the suit.

5. Upon appearance, separate written statements were filed on behalf of respondent Nos.1 and 2. Primarily, it was pleaded that the

agreement dated 13.03.1988 was a forged and fabricated document. Besides, the value of the property in dispute being more than Rs.100/-, the document dated 13.03.1988 required registration and in the absence thereof, it created no right, title or interest in favour of the appellants-plaintiffs. Replication to the written statement was filed on behalf of the appellant-plaintiff while reiterating the stand taken in the plaint.

6. Based on the pleadings of the parties, following issues were framed:-

1. *“Whether the defendant No. 1 had left the rasta Marked ABCD measuring 2 gathas in width and 36 gathas in length? OPP*
2. *Whether the plaintiff has left Rasta measuring 2 gathas from land upto the length of 80 gathas in Kh. No. 10//9/2 and 10//10 as alleged? OPP*
3. *Whether the defendants have dug a tube-well in the passage and planted guava trees in the passage and caused the obstruction?OPP*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiffs have no locus-standi to file the present suit?OPD*
6. *Whether the suit is within limitation? OPD*
7. *Whether the plaintiffs are estopped by their act and conduct? OPD*
8. *Whether the plaintiffs are entitled to mandatory injunction as prayed for? OPP*
9. *Whether the plaintiffs are entitled for damages, if so, to what effect? OPP*
10. *Relief.”*

7. It may be pointed out here that while the suit was fixed for recording of plaintiff's evidence, plaintiff No.2 namely, Iqbal Singh prayed for withdrawal of suit on his behalf and the said prayer was

granted vide order dated 16.09.2002. However, the appellant-plaintiff No.1 continued to pursue the suit in his individual capacity.

8. Learned trial Court vide judgment and decree dated 07.04.2025 dismissed the suit filed at the instance of appellant-plaintiff No.1 *inter alia* for the reason that though, the agreement dated 13.03.1988 was proved on record as Ex.P-1, however, the same merely remained as paper transaction been never acted upon. It was further recorded that the agreement dated 13.03.1988 being unregistered did not create any right, title or interest in favour of the parties and also that the suit filed at the instance of appellant-plaintiff No.1 was barred by limitation.

9. Aggrieved thereof, appellant-plaintiff No.1 filed first appeal, however, the same came to be dismissed vide judgment and decree dated 30.10.2007 passed by the Court of learned Addl. District Judge, Ropar. In addition to the upholding of the findings recorded by the learned trial Court, it was also expressed that since only a carbon copy of agreement dated 13.03.1988 was produced on record, the same was inadmissible in evidence. Aggrieved of the same, the appellant-plaintiff No.1 filed the present appeal which was initially dismissed vide judgment dated 15.01.2009, however, in civil appeal No.6706 of 2013 (***Mohinder Singh vs. Jarnail Kaur (D) Thr. LRs***) vide order dated 11.09.2019, the Hon'ble Supreme Court remitted the matter for fresh adjudication with the following observations:-

“On this short ground, we allow this appeal and remit the matter to the High Court. We make it clear that we have not expressed any opinion on the merits of the dispute. It is for the High Court to decide whether any substantial question(s) of law arises and the appellant before us is entitled to any

relief or not. With these observations, the civil appeal is disposed of. Pending applications, if any, stand disposed of.”

10. In pursuance of the above, in the main appeal, learned counsel for appellant-plaintiff No.1 submitted that the agreement dated 13.03.1988 was proved on record as Ex.P1 and the same was duly acted upon between the parties with land comprised therein been utilized as passage followed by the recording of the revenue entries in the form of jamabandis for the year 1988 till 1999 which were proved on record as Ex. P-2 to P-6 and P-8 and also in the khasra girdawaris w.e.f. Kharif 1988 till Rabi 1989 proved on record as Ex.P-15 and Ex.P-16. He thus submitted that rather than going by the oral testimonies of the witnesses PW-1 and PW-2, the Court was required to rely upon the aforementioned revenue entries with respect to the user of the land in terms of agreement dated 13.03.1988. He also submitted that even the oral testimonies were only regarding the present situation and were not regarding the possession between 1988 to 1989. In this regard, he placed reliance on judgment passed by this Court in case of ***Shri Partap Singh (Dead) Through LRs, and Ors. Vs. Shiv Ram (Dead) Through LRs.*** reported as ***2020(2) RCR (Civil)120.***

10.1 Learned counsel also contended that the agreement dated 13.03.1988 did not require any registration in terms of Section 17 of The Registration Act, 1908. He placed reliance upon a decision passed in case of “***Varghese Paul Vs. Narayanan Nair***” reported as ***1999(4) RCR (Civil), 30*** and submitted that the registration was not required as the valuation of right been derived under Ex.P-1 was to be considered for the purpose of Section 17(1)(b) and not against the

value of the property forming part of the agreement. He thus submitted that the document Ex.P-1 been unregistered was even required to be relied upon for the purpose of evidentiary value. Para No.3 of the said judgment being relevant is extracted hereunder:-

“3. Section 17 of the said Act describes about the documents of which registration is compulsory and provides in clause (b) that a document in the nature of "other non-testamentary instrument which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property" (emphasis supplied), is required to be registered. A reading of Ext. A1 as mentioned above certainly creates certain right in favour of the parties and also extinguishes certain rights on the third parties to the extent that has been created on the other. But, the issue is merely because there is such a document creating/extinguishing rights over immovable property, does not require to be registered in terms of Section 17(1)(b) unless it is shown that the value of the right title or interest so created or extinguished, is "of the value of one hundred rupees and upwards" ? In other words, the value is relatable not to the land or immovable property whereto or wherefrom such right is created or extinguished; but with reference to "any right, title or interest, whether vested or contingent", so created or extinguished. So, the value of the right of interest that has been created or extinguished is to be borne in mind while considering whether the document like Ext. A1 is required to be registered or not. Though in the Written Statement it had been contended that the document is required to be registered in terms of section 17 of the Registration Act, what is the value of the right created or extinguished in terms of Ext. A1 is not specifically pleaded. On the other hand, the nature of the evidence

tendered by the defendants in support of the contention in the Written Statement is with reference to the value of the land over which such right is created or from which it has been extinguished. Thus, the defendants were making a plea based on Section 17 not with reference to the value of the right or title created or extinguished, but with reference to the value of the immovable property on or from which any such right is created or extinguished. When the defendants thus did not raise a plea with reference to the value of the right or interest so created or extinguished, the trial Court should not have the on strength of Ext. B3 which proves only the value of the land, jumped to the conclusion that the document is registerable in terms of Section 17(1)(b). The trial Court and the appellate court ought to have considered the nature of the right created or extinguished in terms of Ext. A1 while deciding whether the document was required to be registered or not.”

10.2 Learned counsel for the appellant also relied upon judgment passed by Telangana and Andhra Pradesh High Court in **“Dwara Satyanarayana Vs. Malladi Bhanumathi and Others”** reported as **2016(3) ICC 788** . Paragraph Nos. 6 and 8 thereof are reproduced hereunder for reference:-

“6. In the decision in Musunoori Satyanarayana Murti, the issue is in regard to the plaintiffs right to let out drainage water through the drainage channel passing through the defendants fields and such right is based upon an easementary right granted to the plaintiff under a document executed by the father of the defendant and it is a letter. The Madras High Court noted that under section 6(c) of the Transfer of Property Act an easement cannot be transferred apart from the dominant heritage and that section 54 of the Transfer of Property Act taken along with Section 6(c) would appear to contemplate the transfer of an existing easement as distinguished from

the creation of the imposition of a new easement and that there is a clear distinction between the transfer of an existing easement and the creation or grant of a new easement and that the transfer of an existing easement is the act of the dominant owner and is inseparable from the transfer of the dominant heritage, while the creation of a new easement is the act of an owner imposing a burden on his property. On the above reasoning the Madras High court held that the grant of an easement does not involve such a transfer of ownership in immovable properties as is contemplated by section 54 of the Transfer of Property Act and hence, the said document does not require registration. In the cited decision, the decision in Bhagwan Sahai v. Narasingh Sahiah [(1909) 31 ALL.612] was referred to, wherein it was held as follows:

It seems clear to me that the creation of a right of easement by grant is not such a transfer of ownership as is contemplated by Section 54 of the Act. Where under that section an easement is transferred it must be so transferred along with the dominant heritage. There is no other way of transferring it and this arises by reason of the nature of the right. It exists only for the benefit of the heritage and to supply its wants. There is nothing in law which necessitates the creation of an easement being evidenced by writing.

8. *The said document was executed on 15.05.1996 in favour of the plaintiff by Krishnarao @ Krishnamurthy, S/o Satyanarayanamurthy, who is said to be the father of the defendants 1 and 2. In this document, it is stated that the said Krishnarao, the executant of the document, had self acquired the properties in Rs. Nos. 290/1, 276, 275/1 and 275/6 and that he had provided a way to the Northern portion of his lands from Vadapalli Chandravaram punta which is on the South and that the plaintiff Satyanarayana is provided way from the said passage to the land sold to him i.e., land in S. No. 275/1 and 275/6 to go to his lands from Southern side*

Vadapalli to Chandravaram punta. It is further stated in this document that through the said passage tractors, carts, cattle and agricultural implements can be taken and for the same no objection would be raised and that the document is executed with consent. The document was signed by the said Krishnarao @ Krishnamurthy and was attested by two witnesses and also bears the signature of the scribe. It was executed on non judicial stamp paper of the value of Rs. 100/-. A plain reading of the document shows that already the executant of the document had provided a right of way from a punta to his lands and that he had permitted the said Satyanarayana to use the same passage to reach his land, which was sold to him i.e., the land in S.No. 275/1 and 275/6. Therefore, under this document, in the well considered view of this Court, licence is granted to Satyanarayana, the plaintiff, to use the same passage which was already in existence and which was provided for the lands of the said Krishna Rao @ Krishnamurthy, the executant of the document. Admittedly, no title or ownership over the said passage is created under the document in favour of Satyanarayana, the plaintiff, who is the beneficiary under the document. He was only permitted to reach his lands through the said passage, which passage the executant of the document has already provided for his lands. Therefore, to my mind the document in question created no right in immovable property; and, only irrevocable permission was accorded under it to use the existing passage by granting licence so to say. Viewed thus, this court finds that the document in question does not require registration. Though one of the contentions of the defendants, who are objecting for marking of the document on the ground that it requires registration, is also that the said document is a forged document, that aspect need not be considered by this Court in this Revision petition as it is for the trial Court to go into the said aspect at the appropriate stage, in case the

document is eventually admitted in evidence and necessary evidence is adduced by both the sides to prove and disprove the document.”

10.3 Learned counsel for the appellant emphasized while submitting that the Courts below went wrong while dismissing the suit filed at the instance of appellant-plaintiff No.1, being barred by limitation. He submitted that though under Section 6 of the Specific Relief Act, 1963, a suit can be filed within 6 months of the date of dispossession, however, even if the said remedy was not availed, the suit for mandatory injunction could always be entertained within three years from the date of cause of action and thus, the suit filed at the instance of appellant-plaintiff No.1 was not to be dismissed being barred by limitation.

11. On the other hand, learned counsel appearing on behalf of respondents submitted that Iqbal Singh whose land forming part of killa No.10/1 was to be utilized under the agreement dated 13.03.1988 never acted thereupon and always remained in cultivation of that land and this fact was also traceable from the khasra girdawari entries Ex.P-16 from Rabi 1990 till Rabi 1994. He thus, submitted that the agreement though took place between the parties but it was never acted upon. He also submitted that the agreement dated 13.03.1988 was since creating valuable rights in the property and the same was thus, required to be registered. In this regard, he placed reliance upon decision rendered by Rajasthan High Court in case of **“Shree Chand and Ors. vs. Civil Judge (Sr. Div.) and Anr. reported as 2016 AIR Rajasthan 191**. Para Nos. 9 and 10 of the said judgment are reproduced hereunder:-

“9. *Apart from that, even if for the sake of arguments, it is admitted that conferment of right of way is a separate right independent of the sale of land, even then, in my considered opinion, such right of way can be conferred by a registered document only. As per the document in question and as per the claim of the petitioners themselves, the respondent agreed to provide them a nine feet wide way over his other land. What are the consequences of such conferment? In my opinion as a result of such conferment right, title or interest in the land comprising in the way which was vested in respondent, got extinguished and limited and right to use it as a way got created and declared in favour of the petitioners. Thus, as per the requirement of Section 17(1)(b) of the Act as a result of conferment of right of way on the petitioners right, title and interest of the respondent extinguished and limited and right was created and declared in favour of the petitioners and any document conferring any such right is compulsorily registrable. It is also to be noted that as per the definition of the term 'immovable property as provided under Section 2(6) of the Act, the term 'immovable property' includes rights to ways also: In the light of the provisions of Section 17(1)(b) of the Act, if the term 'immovable property is considered, it becomes manifest that a right of way can be created or conferred by a person over his land in favour of any other person by a registered document only. In the present case also the respondent could have conferred upon the petitioners right of way over his land by executing a registered document only. In the case in hand although there is no transfer of ownership in the land over which the right of way is being claimed by the petitioners and which has been denied by the respondent but right of way is included in the definition of immovable property as defined under Section 2 (6) of the Act. Thus, the document which creates, declares, assigns, limits or*

extinguishes a right of way in or over a land is required to be registered.

10. *Effect of non-registration of documents required to be registered is provided in Section 49 of the Act. It provides that no document required by Section 17 of the Act to be registered shall affect any immovable property comprised therein or shall be received as evidence of any transaction affecting such property or conferring such rights unless it is registered. It is well settled legal position that a document required to be registered, if unregistered, is not admissible in evidence under Section 49 of the Act. In the present case, conferment of right of way by respondent over his other land in favour of the petitioners but transfer of immovable property as per the definition of the term as provided under Section 2 (6) and it is not less than creation, declaration and assignment of property rights in favour of the petitioners and extinguishing of right, interest and title of the respondent in his land, it could be effected by a registered document only and the document in question being unregistered is not admissible in evidence.”*

He thus, submitted that the documents being unregistered did not create any right, title or interest in the parties and the suit was liable to be dismissed.

12. I have heard the learned counsel for the parties and gone through the paper-book.

13. In the humble opinion of this Court, the present appeal raises following points for consideration:-

- I. Whether the agreement dated 13.03.1988 (Ex. P1) by which a passage was created is required to be compulsorily registered under the provisions of the Registration Act, 1908?*
- II. Whether the suit is barred under the provisions of Limitation Act 1963?*

III. Whether the agreement dated 13.03.1988 (Ex. P1) was acted upon by the parties?

COMPULSORY REGISTRATION ANALYSIS:

14. Before proceeding further, it is essential to examine Section 17 of the Registration Act, 1908 (*hereinafter "the Act"*) and the same is extracted hereunder:-

17. Documents of which registration is compulsory.—(1) *The following documents shall be registered, if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*

- (a) *instruments of gift of immovable property;*
- (b) *other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property...."*

A bare reading of Section 17(1)(b) of the Registration Act, 1908 shows that there are two conditions laid down in the said section that renders a document to be compulsorily registrable: -

1. Not-testamentary instrument which creates, declares, assign, limit or extinguishes any right, title or interest.
2. The value has to be rupees 100 and upwards.

15. Further, the Hon'ble Apex Court in ***Mithilesh Kumar vs Manohar Lal*** reported as **1996 (4) SCC 251** held that both the conditions have to be satisfied under Section 17(1)(b) of the Act for the document to be compulsorily registerable and the relevant paragraph from the said judgment is extracted here under:-

"7.It is seen that what is material for the purpose of compulsorily registration under Section 17(1) is that the document must create, declare, assign, limit or

extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property should these two conditions be satisfied before insisting upon instrument for compulsory registration under Section 17(1)(b) of the Act....”

15.1 With regard to the first condition, it is essential to answer the question that whether the agreement by which right to passage/way has been created, be considered as creating, declaring, limiting or extinguishing any right title or interest for it to fall within realm of Section 17 (1)(b) of the Act? The parties in the present case have relied on two judgements of two different Hon’ble High Courts.

16. The defendants-respondents placed reliance upon the decision rendered by the Hon’ble Rajasthan High Court in case of **Shree Chand Case (supra)** which stated that even if for the sake of the arguments, the conferment of right of way is a separate right independent of sale of land, then, such right of way can be conferred by a registered document only. The Hon’ble Court interpreted Section 17(1)(b) of the Act in the context of right of way whereby it was held that as a result of conferment of right, title or interest in the land comprising in the way which was vested in respondent, got extinguished and limited and a right to use it as a way got created and declared in the favour of petitioners therein.

16.1. Thus, since there was a conferment of right, document conferring any such right is compulsorily registerable. It was also noted that as per the definition of the term ‘*immovable property*’ as provided under Section 2(6) of the Act, the term ‘*immovable property*’ includes right to ways also. In the light of provisions of Section 17(1)(b) of the

Act if the term '*immovable property*' is considered, it becomes manifest that a right of way can be created or conferred by a person over his land in favour of any other person by registered document only. Although the Hon'ble Court never went into the question of interpretation of second condition of "value of rupees 100 or more" as envisaged under Section 17(1)(b) of the Act as the facts of the case therein did not have a separate agreement for the right of passage and it was part of the sale deed itself thus, the question of valuation never came up.

17. The appellant- plaintiff on the other had have referred to the judgment by the Hon'ble Kerala High Court in ***Vergheese Paul's case (supra)*** which specifically dealt with both the conditions under Section 17 (1)(b) of the Act.

18. The Court thereby dealt with an agreement between the plaintiffs and defendants, executed, concerning a passage and construction of staircase with certain terms and conditions laid down. The Court dealt with the stipulation that a document creating/ extinguishing rights over immovable property does not require to be registered in terms of Section 17(1)(b) unless it is shown that the value of the right, title or interest, created or extinguished is of the value of Rs.100 and upwards. It was held that value of the right of interest that has been created or extinguished is to be borne in mind instead of value of the land while considering whether the document is required to be registered or not. The Court had put the onus on the defendants and it was stated that though the written statement did contend that the document was required to be registered in terms of Section 17(1)(b) of the Act but the value of the right created or extinguished

was not specifically pleaded. The nature of the evidence tendered by the defendants was also with reference to the value of the land over which such right was created or from which it has been extinguished. When the defendants did not raise a plea with reference to the value of the right or interest created or extinguished, the trial Court could not depend upon the document which only proves the value of the land in terms of registrability under Section 17(1)(b) of the Act. The Court further held that the agreement in the question was a clog on the rights of the parties to use the pathway absolutely in terms of their title to construct a staircase for mutual benefit and therefore, the right created or extinguished in terms of the agreement is a restrictor covenant and hence, incapable of valuation. It cannot attract section 17 of the Act and thus, the document was not required to be registered and consequently, to be accepted as an admissible document.

19. It is pertinent to mention here that both the judgments are not in conflict with each other. The judgment of the Hon'ble Kerala High Court went a step further to the judgment of Hon'ble Rajasthan High Court, whereby both the judgments stated that the right of passage creates and extinguishes the right of parties thus, the first condition under Section 17(1)(b) is satisfied. It is only the judgment by Hon'ble Kerala High Court that has dealt with as to which value is to be taken for the document to be compulsorily registered under Section 17(1)(b) of the Act. The Hon'ble Kerala High Court has placed reliance on the judgment of the Hon'ble Apex Court in case of ***Mithilesh Kumar vs Manohar Lal*** reported as **1997 (9) SCC 54**.

19.1 The Hon'ble Apex Court in **Mithilesh Kumar's case (supra)** considers an agreement whereby any other construction

except a Chabutra with specifications was not allowed and other conditions in relation to it were laid down. The question before the Court was whether this agreement was a compulsory registrable document. The Hon'ble Court resorted to the definition of instrument under Section 2(14) of the Indian Stamp Act, 1899 which states that every document by which any right or liability is or purports to be created, transferred, limited, extended, exchange or recorded. The agreement is thus, an instrument within meaning of Section 2(14) of the Indian Stamp Act, 1899. The Court was of the opinion that the respondent had limited its way of clog on the exercise of his right and enjoyment of the property purchased under the sale deed.

19.2 The Court had agreed that vide the sale deed the appellant had conveyed to the respondent absolute right, title and interest in the property but the restrictive clog on the exercise of the right over his property which the respondent had undertaken was for the construction of house or wall over the property purchased. Though the agreement was in relation to the same property which was the subject matter of the sale deed, the undertaking given by the respondent was as to the exercise of his right over the property, but it was incapable of valuation and thus, its value could not be construed to be ₹100 or more. Under those circumstances the agreement was not compulsorily registrable under Section 17(1)(b) of the Act. As such, the Hon'ble Apex Court had held that the rights that can be valued for Rs.100/- or more would render the document to be considered compulsorily registrable.

20. Keeping in mind the aforesaid discussion and examining the agreement in the present case, it's a tripartite agreement whereby

the parties have agreed to leave a passage on their respective lands to gain access to their fields. This passage is creating right of way for the parties. The word "create" in legal terminology means to bring into being to invest with a new title, or to produce. Therefore, every non-testamentary instrument which means to, or has the effect of originating some right, title of interest in immovable property will be governed by the word 'create'. 'Extinguish' is a counterpart of the word 'create'. Thus, as the parties conferred right to way to each other, their rights in their respective properties were limited, restricted and extinguished simultaneously as certain portion of land was to be used for the limited purposes of passage only. The parties thus, as a result of conferment of right of way got extinguished some right, title and interest whereas a limited right was created and declared in favor of each other, satisfying the first condition under Section 17(1)(b) of the Act.

21. Subsequently, the question arises, how is the valuation of the right to be done? The discussion of ***Kashinath Bhaskar Datar vs. Bhaskar Vishweshwar AIR 1952 Supreme Court 153*** by the Hon'ble Apex Court in **Mithilesh Kumar's** case (supra) finds relevance here. It was stated that the right to receive rate of interest mentioned in the mortgage deed is enforceable and subsequent agreement which limits or extinguishes the right to receive interest at a particular rate being a covenant limiting the right, renders the document compulsorily registrable under section 17(1)(b) of the Act because, the valuation of limiting the interest is capable of being valued as the interest can be quantified.

22. In the present case, though in the written statement it had been contended that the document is required to be registered in terms of Section 17 of the Act, but what is the value of the right created or extinguished in terms of agreement dated 13.03.1988 (Ex. P1) is not specifically pleaded therein.

22.1. This Court then turns to the terms and conditions mentioned in the agreement itself for the valuation of the said right. The agreement dated 13.03.1988 (Ex. P1) mentions that if any of the party goes contrary to the above-mentioned passage, then they will be liable to pay a sum of Rs. 20,000/- as damages and compensation to each party. From the said wording of the agreement, it can be safely assumed that violation of the right of passage would lead to compensation of Rs. 20,000/- to each party which can be taken as the valuation of the right in the present case. Thus, the agreement dated 13.03.1988 (Ex. P1) was liable to be registered compulsorily under Section 17(1)(b) of the Act as the valuation of the right is more than Rs. 100/- in the present case. Consequently, agreement dated 13.03.1988 (Ex. P1) cannot be read into evidence and the defendants are not bound by it.

ANALYSIS REGARDING LIMITATION:

23. With respect to limitation, this Court finds merit in the argument of the appellant that there exists no expressed bar as to a suit under Section 39 of Specific Relief Act, 1963 i.e. a suit for mandatory injunction cannot be filed if the remedy under Section 6 of Specific Relief Act has not been availed. It is true that the suit for mandatory injunction does not find any specific mention in Schedule I of the Limitation Act and consequently, the residuary clauses have to

be resorted to. Thus, placing reliance on the judgment by the Hon'ble Apex Court in ***Estate Officer, Haryana Urban Development Authority v. Nirmala Devi, 2025 INSC 843***, whereby it was held that it is immaterial as to whether Article 58 of the Limitation Act or Article 113 of the Limitation Act would apply, the period of limitation would be 3 years in case of suits for mandatory injunction.

24. Furthermore, this Court in its decision dated 01.04.2019 passed in RSA No.6602 of 2016 titled as ***Raees Ahmad Versus Dayawanti***, held that although, there is no specific article dealing with the suits for mandatory injunction in the Schedule attached to the Limitation Act, 1963, however, in absence thereof, Article 113 which is a residuary article dealing with the suits for which no period of limitation is specifically provided elsewhere, the limitation would be 3 years from the date when the right to sue accrued. Thus, applying the same principles, the limitation period in the present case is taken to be 3 years.

25. The learned Courts below have erred in holding the present suit to be barred by limitation. The date when cause of action arose i.e. the tubewell was dug and the trees were planted by the defendant-respondent, was 03.03.2001 as mentioned in paragraph 9 of the plaint and the date of institution of the suit was 20.04.2001. Further, from the perusal of Exs. P- 9 & P- 10 i.e. the Khasra Girdawari of Kharif year 1994 to Rabi year 1999 and Kharif year 1999 to Rabi year 2001 respectively, the change from '*Gair mumkin Rasta*' to '*Gair mumkin tube well*' entry for the land of the respondent is seen in the year 1999 to 2000. So even if the cause of action is assumed to have

arisen, in year 1999, the present suit would not be barred by limitation as the limitation for filing suit for mandatory injunction is three years.

ANALYSIS REGARDING THE FURTHERANCE OF THE AGREEMENT

26. Firstly, the findings of the learned Courts below regarding the factum of furtherance of the contract are required to be examined, and thereafter the legal propositions expounded by both sides would be examined. While admittedly, this Court shall not intervene with the concurrent findings of the fact recorded by the learned trial Court and the learned first Appellate Court, however, it is also settled law that when the findings are perverse, contrary to the records, or on the basis of misreading of evidence, there is no legal impediment in doing so. This is also required to be taken into consideration that Regular Second Appeals in the States of Punjab, Haryana and Union Territory, Chandigarh, are regulated by Section 41 of the Punjab Courts Act, 1918, and not by section 100 of the Code of Civil Procedure, 1908. Reliance in this regard can be placed on a judgment of Co-ordinate Bench of this Court in ***Smt. Parkash Devi v. Rajinder Kumar, 2022 (4) RCR (Civil) 145*** and relevant para of which is reproduced here under:-

"The Regular Second Appeals in the States of Punjab, Haryana and Union Territory, Chandigarh, are regulated by Section 41 of the Punjab Courts Act, 1918, and not by section 100 of the Code of Civil Procedure, 1908. Reference in this regard can be made to the judgment of the Five Judge Bench in Pankajakshi v. Chandrika (2016) 6 SCC 157. Under Section 41, the High Court is entitled to reappreciate the evidence if the judgments passed

by the Courts below not only reflect misreading of evidence but also suffer from perversity."

27. While answering the question whether the parties acted in furtherance of the agreement dated 13.03.1988 (Ex. P1) or not, both the learned Courts below have held that it was incumbent upon the parties to have presented the agreement Ex. P1 before the revenue officials for its implementation. The plaintiff himself in his cross examination has admitted that he neither presented the agreement dated 13.03.1988 (Ex. P1) before the Tehsildar/ACIG for implementation nor did he make any application nor was any mutation regarding the passage had been entered or sanctioned. Moreover no 'Tatima' was prepared by any of the revenue officials regarding the passage in question nor was any 'Roznamcha' prepared that the passage had been left by the parties. This is indicative of lack of intention on the part of the parties for the implementation of the said agreement.

28. The argument by the appellant-plaintiff before this Court is that the learned Courts below did not properly rely upon revenue entries including the jamabandies for the years 1988 to 1999 exhibited as Exs. P-2 to P-6 and P-8 and Khasra Girdawari w.e.f Kharif 1988 till Rabi 1989 i.e. Exs. P-15 & P-16. This Court admits that as per the law laid down by the Hon'ble Apex Court in the case of **Pratap Singh dead through LR (supra)**, the Khasra Girdawaris and jambandies being record of rights, though rebuttable, carry a presumption of truth and therefore, the learned Courts below ought to have accepted them at the face value, consequently, placing the burden on defendants to rebut the same. A perusal of Exs. P- 9 & P- 10 i.e. the Khasra

Girdawari of Kharif year 1994 to Rabbi year 1999 and Kharif year 1999 to Rabbi year 2001 respectively, shows that the change from '*Gair mumkin Rasta*' to '*Gair Mumkin tube well*' entry for the land of respondent is clearly recorded during the year 1999 to 2000. The learned Courts below have not given any finding as to how this specific change came to be recorded. However, in the present case, it also stands true that there is severe lack of any other evidence to substantiate the claims of the plaintiffs.

29. Further, the conduct of the appellant does not inspire confidence in his claims. A perusal of Ex. P-16 i.e. a copy of Khasra Girdawari from Kharif year 1989 to Rabi year 1994, clearly shows that in the entry relating to the property of Iqbal Singh, the description '*Gair Mumkin Tubewell and Rasta*' was changed to '*Gair Mumkin Tubewell House*' w.e.f Kharif Year 1992 i.e. almost 9 years prior to the institution of the present suit. The subsequent entries also do not find any mention of the '*Rasta*' which casts suspicion on the intention of the appellant-plaintiff to act in furtherance of the agreement dated 13.03.1988 (Ex. P1) as the said agreement was a tripartite agreement vide which the passage on land of Iqbal Singh was also the only passage to access the land of appellant in Khasra/Khewat No. 9/6/1. Yet, the appellant-plaintiff never initiated any legal action against Iqbal Singh for the breach of the agreement. These facts were further confirmed in the findings of both the learned Courts below whereby it was noted that PW1 Prag Dass, father of the appellant had deposed in his statement that Iqbal Singh had cultivated his land which is the alleged passage and wheat crop has been standing therein. The cultivable area of Iqbal Singh is located towards the southern side of

the property. Further, even the appellant himself in his cross examination has admitted that at the spot there exists a water channel made by Iqbal Singh for irrigating his fields in between Khasra 10/1 and 10//10 and he had also planted the trees adjoining to Khasra number 10//1 min, within his own property bearing Khasra No.10//10. It is also pertinent to note here that Iqbal Singh had withdrawn the suit against the respondents on 16.09.2002 and had himself planted the trees on the property within his possession and ownership which was meant for the passage. All the afore-mentioned facts were in the very knowledge of the appellant but he never acted in furtherance of his rights.

30. This Court cannot turn a blind eye to the complete lack of efforts by the appellant to act in furtherance of the agreement dated 13.03.1988 (Ex. P1). Thus, even if the said Khasra Girdawaris and Jamabandis would have been stood unrebutted before the learned lower Courts, it is difficult to interfere with the well reasoned findings recorded by the learned Courts below. In the present case, due to the lack of other evidence to substantiate the contentions of the appellant-plaintiff coupled with contradictory depositions from the plaintiff side while considering the preponderance of the probabilities and the aforesaid discussion, this Court holds that the answer to the question whether the parties acted in furtherance of the agreement remains negative.

CONCLUSION

31. In view of the discussion made herein above, we hold that factually, the parties did not act in furtherance of the agreement dated 13.03.1988 (Ex. P1) and legally, though the suit was well within limitation, the agreement dated 13.03.1988 (Ex. P1) was liable to be registered compulsorily under Section 17(1)(b) of the Act as the valuation of the right is more than Rs. 100/- in the present case thus, the agreement dated 13.03.1988 (Ex. P1) cannot be read into evidence and the defendants are not bound by it.

32. In view of the discussion made herein-above, finding no merit in the present appeal, the same is thus, dismissed.

33. Pending application(s), if any, shall also stand disposed of.

10.12.2025
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>