

RSA No.598 of 1986 (O&M)
RSA No.195 of 1986 (O&M)

[1]

In the High Court of Punjab and Haryana at Chandigarh

RSA No.598 of 1986 (O&M)
Date of Decision: 07.10.2015.

Ram Bilas ...Appellant

Versus

Smt. Kaushalya Devi and others
...Respondents

RSA No.195 of 1986 (O&M)

Kaushalya Devi ...Appellant

Versus

Ram Bilas & others ...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Alok Jain, Advocate,
for appellant in RSA No.598 of 1986 and
for respondents in RSA No.195 of 1986.

Mr. Ajay Jain, Advocate,
for respondents RSA No.598 of 1986 and
for appellant in RSA No.195 of 1986.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

KULDIP SINGH, J. (ORAL)

By this judgment I shall dispose of two connected regular second appeals bearing RSA No.195 of 1986 and RSA No.598 of 1986, arising out of the same judgment and decree dated 24.10.1985, passed by learned Additional District

Judge, Narnaul, whereby the three appeals against the judgment and decree dated 27.01.1979, passed by learned Senior Sub Judge, Narnaul were dismissed.

The Lower Court has granted mandatory injunction, directing the defendant Nos.1 & 2 to provide a passage of 3 feet width in front of the house of the plaintiff, which has been marked as E3 to E-4 in the site plan Exhibit P-1. The site plan Exhibit P-1 was ordered to be made part of the decree sheet. It was further directed that this passage has to be provided by them after demolishing their wall starting from point A towards B in the site plan Exhibit P-1. It was further held that since it would be a bit difficult for the defendants to do so, they were allowed to demolish the said wall and give a passage of 3 feet in front of the house of the plaintiff in total. Regarding Sehan ABCD, the suit was dismissed in view of the findings of this High Court.

Briefly stated the plaintiff and defendants are the neighbourers. The plaintiff owns property bearing No.1206/3 and the defendant Nos.1 & 2 own property bearing No.1206/2 situated in Mohalla Misarwara, Narnaul, Haryana. Plaintiff claimed that defendants have raised construction in the site of chowk, court-yard and the passage in front of the main gate of

his house. Therefore, he sought mandatory injunction, directing the defendant Nos.1, 2 & 5 to demolish the same. The Lower Court found that the said chowk and courtyard do not exist and declined the mandatory injunction, whereas the mandatory injunction regarding the 3 feet passage (in width) as reproduced above was granted. Three different appeals were filed by the plaintiff as well as different defendants, which were also dismissed.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of Lower Court judgment and Lower Court file shows that the plaintiff in the plaint had prayed for the relief of mandatory injunction regarding chowk, courtyard and passage in front of his main gate. Further, it was also prayed that any other relief which the court may deem fit, may also be granted.

The contention of the learned counsel for the appellant in RSA No.195 of 1986 is that no prayer was made for granting 3 feet passage (in width) as has been decreed by the Lower Court. Secondly, the plaintiff had failed to prove his case regarding the chowk, courtyard and passage and therefore, the said relief is to be declined.

The learned counsel for the appellant in RSA No.598 of 1986 has disputed the findings recorded by the Courts below regarding declining the main relief to him with regard to Sehan courtyard etc.

I have gone through the boundaries of the properties owned by the parties as given in their original sale certificate Exhibit DW2/C. In the boundary of the defendant, a street towards the western side is mentioned. In the written statement, the defendant had taken the stand the said street is 3 feet wide. The Lower Court itself visited the spot in the presence of the parties, their counsel and the other people of the locality and has recorded the findings of facts. So far as the law point raised before this Court to the effect that the relief granted was not claimed is concerned, the same is found to be incorrect as the plaintiff had specifically prayed in the plaint that any other relief which the Court may deem fit, may also be granted. The Lower Court, in order to provide a passage in front of the main gate of the plaintiff, has granted mandatory injunction. The findings have been recorded after visiting the spot in the presence of the parties and after going through other evidence produced by the defendants. These are findings of facts and cannot be interfered in the Regular

RSA No.598 of 1986 (O&M)
RSA No.195 of 1986 (O&M)

[5]

Second Appeal. No substantial question of law arises in these appeals. Hence, both the appeals are dismissed.

In view of the disposal of the appeal, all the pending applications also stand disposed of.

October 07, 2015

Ankur

(KULDIP SINGH)
JUDGE