

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

RSA No.4580 of 2009 (O&M)

Date of decision : 14.12.2015

Mehma Singh deceased through LRs

...Appellant

Versus

Rajan Mittal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ashish Gupta, Advocate for
Mr. Vikram Singh, Advocate for the appellant.

Mr. C.B. Goel, Advocate for respondent Nos.1 and 2.

Mr. C.S. Singh, Advocate for
Mr. G.S. Hooda, Advocate for respondent No.7.

AMIT RAWAL, J. (Oral)

The appellant-plaintiffs is in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit, has been set aside.

Mr. Ashish Gupta, learned counsel appearing on behalf of the appellant-plaintiffs submits that suit for mandatory injunction was filed in the year 1999 seeking restraint order against the respondents-defendants that on the northern side of the house of the plaintiff, there is a 16 feet wide

street being used by all the habitants of colony. In the month of March, 1999, the defendants encroached upon the said street and threatened the plaintiff and other habitants that they have great influence with the local police and as well as Municipal Council. Though the aforementioned suit was contested by the respondents by refuting the averments made in the suit on the ground that path does not belong to the Municipal Council, Karnal and belongs to Punjab Wakf Board and defendant No.1, defendant No.2 and defendant No.3 constructed their houses in the year 1969, 1969 and 1999, respectively.

He submits that trial Court on the basis of the report of Inspector of the Municipal Council, Karnal found that the defendant No.1 illegally had encroached the gali up to the extent of 6 feet by way of raising unauthorised construction. He submits that trial Court further found that Municipal Committee has not brought any record regarding the street and thus decreed their suit. The lower Appellate Court erroneously swayed away with two documents i.e. Town Planning Scheme Ex.AW1/B and sale deed Ex.AW4/A, thus, there is illegality and perversity, much less, substantial question of law arises for adjudication.

Mr. C.B. Goel, learned counsel appearing on behalf of defendant Nos.1 and 2 submits, that since defendants have raised the construction since long and the appellant-plaintiffs had purchased in the year 1986 when the site plan was sanctioned and the construction was also existing and there was no further construction. Had it been so, the appellant-plaintiff would have sought permanent injunction, much less, resorted to ad-interim measures, thus there is no illegality and perversity in the impugned

judgment and decree.

Mr. C.S. Singh, Advocate for Mr. G.S. Hooda, learned counsel appearing on behalf of Municipal Council submits, that liberty has been granted to the Municipal Council to take action in accordance with law.

I have heard learned counsel for parties and appraised the paper book.

The sale deed vide which the appellant-plaintiff acquired the ownership is Ex.AW4/A. The street in question has been mentioned as 10 feet, in essence, when the property was purchased by the appellant-plaintiff from the vendor, street was already 10 feet wide. No evidence has been produced on record that prior to the purchase of the property by the appellant-plaintiff, street was 16 feet wide, except the report of Inspector which was not even with the conformity with its terms.

I would not be indulging into determination of the question on title whether it is private or public street, much less, belongs to Punjab Wakf Board but the fact remains that if it is in ownership of the Municipal Committee, Municipal Committee is well within his right to take action in accordance with law.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court.

Accordingly, appeal is dismissed.

14.12.2015

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**(AMIT RAWAL)
JUDGE**