

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

Regular Second Appeal No.2729 of 2011 (O&M)

Date of decision: 10.3.2015

Kailash and others

... Appellants

Versus

Smt.Geeta Devi Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.S.K.Yadav, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This is an appeal from concurrent decrees and findings of fact directed against the judgment and decree of the learned Additional Civil Judge (Senior Division), Mohindergarh dated 4th September, 2009 as affirmed by the learned ADJ, Mohindergarh on 21st January, 2011 in first appellate decree.

2. The facts are that the plaintiff brought a suit for permanent injunction against the respondents claiming easementary right of free air and light in the building owned by her through her father-in-law with his family residing in suit premises for over a 100 years situated in Mohalla Nimri Niche in Mohindergarh Town of Haryana. The dispute is with respect to the existence or non-existence of 7 ventilators in the ground floor of the

building and two ventilators on the first floor facing a street, *Rasta-e-Shaream* separating the building by a street which is 71 feet & 3 inches in length and 3 feet 3 inches wide passing from East to West. The building is old and made of small bricks and lime mortar. She alleged in the plaint that the defendants are powerful persons who are adamant in encroaching on the *Rasta-e-Shaream* shown in pink colour in the site plan and intend to raise construction on rasta so as to cause the closing of the ventilators existing in the southern wall of the house of the plaintiff denying the plaintiff of her easementary rights to natural light and air. In case, they succeed, she would lose free access to her of air and light which would impair enjoyment of her property which benefit she has had from time immemorial. The suit for permanent injunction sought restraining the defendants-appellants from closing the ventilators on the southern wall of the house of the plaintiff. In case, the defendants succeeded in encroaching upon the street and closing the ventilators, then a decree of mandatory injunction was sought to restore the property to its original position.

3. The defendants contested the suit and denied ownership of the property claimed by the plaintiff to be a *Haveli*. The correctness of the site plan was disputed. They pleaded that plaintiff was not the owner of house bearing No.B-III-3S-314. The owner of the property in the record of the Municipal Committee is Chanderdutt son of Devi Sahai according to house tax assessment register for the year 1981-82. Chanderdutt is plaintiff's father-in-law. He was survived by Ramdutt and Laxman. They are still alive. Therefore, the plaintiff has no concern with the disputed property. If she has got her name entered in the Municipal record, then it is not binding on the

rights of the defendants. The defendants denied existence of the street itself. It was pleaded that by the side of the southern wall of the *Haveli*, there lies a courtyard of the defendants. The wall which has been shown by the Local Commissioner in his report Mark 'CD' is a common wall of both the parties. When the wall of the *Haveli* is joint property and in the wall, the defendants have kept open space for window and space for *chukhar* then their claim based on easementary rights does not arise. It was pleaded that the plaintiff had opened two ventilators in the first floor. Therefore, no easementary right accrued from the past. The defendants denied that there are any ventilators in the ground floor but admitted two ventilators on the first floor with no easementary rights. The courtyard in the southern side of the disputed *Haveli* is the property of the defendants bearing No.B-III/312. The defendants asserted that the courtyard in the southern side of the disputed *Haveli* is the property of the defendants or what is called locally a *Gawara* and their rights are exclusive.

4. On the above facts the parties went to trial on the following issues and led evidence in support of their respective cases as per onus and closed their evidence.

- “1. Whether the plaintiff has easementary right of light and is entitled to injunction as prayed? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiff has no locus standi to file the suit?
OPD
4. Whether the plaintiff is estopped from filing the suit due to his act and conduct? OPD

5. Whether the defendants are entitled to special costs u/s 35A CPC? OPD
6. Relief.”

5. The learned trial Court has placed faith on the site plan of the *Haveli* denoted by letters ABCDEFGH which is the property of the plaintiff. This finding is based on admission of witnesses and the evidence of the plaintiff.

6. The question remains whether there was a *Rasta-e-Shaream* which is 71 feet 3 inches length and 3 feet 3 inches wide adjoining the southern wall of the plaintiff's property leading from East to West. The plaintiff admitted in his cross-examination that there used to be street in between the house of the plaintiff and the *Gawara* of the defendants. However, presently, there is no street. If the street does not exist, then there is no explanation as to when the street was closed by the defendants or anyone else. The third question with respect to easementary rights of air and light arises whether the wall in dispute from which ventilation is claimed is joint or not. The trial Court has affirmed after appreciating evidence on record that the plaintiff is absolute owner of the disputed *Haveli* marked by letters ABCDEFGH and there were existing 7 ventilators on the southern wall of the *Haveli* opening towards the side of the defendants and two ventilators exist on the first floor of the same *Haveli*. The suit has been partly decreed. The plaintiff's easementary rights have been declared with respect to 7 ventilators on the ground floor and two ventilators on the first floor and the defendants have no right to close these openings. The plaintiff

has easementary rights in joint for sufficient length of time to access freely natural air and light from those ventilators in the southern wall of her house. However, her claim staked over the street has been declined on evidence of admission of plaintiff.

7. Aggrieved by partial dismissal of the suit with respect to the street, the appellant carried first appeal to the learned Additional District Judge, Narnaul. The respondents preferred cross-objections No.104 of 2009 questioning the correctness of the findings with respect to the ventilators. Learned Additional District Judge, Narnail has dismissed both the appeal and the cross objections and affirmed the conclusion of the learned trial Court as correct leaving the parties to bear their own costs.

8. So far as the ventilator rights are concerned with respect to the 9 ventilators on two floors on the southern wall of the two storeyed building belonging to the plaintiff, no interference is called for in view of the concurrent findings of fact recorded by both the courts below recorded after appreciating the oral and documentary evidence on record and no substantial question of law arises for consideration in this appeal on this account.

9. The findings with respect to the street recorded by the learned trial Court and endorsed by the learned appellate Court are not open to be disturbed on the admission of the plaintiff herself that there was a street once upon a time but there is none presently. No declaration of right for street is claimed as the suit was one for permanent injunction restraining the defendants from closing the ventilators or encroaching upon the street.

When it is not proved that the street was a *Rasta-e-Shaream* and no title was

shown by the plaintiff over the street vesting in her or that it was common to both or the public at large, then no interference whatsoever is called for on this issue as well.

10. Resultantly, the appeal fails and is dismissed with the parties left to bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

March 10, 2015
Paritosh Kumar