

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.4427 of 2011 (O&M)

Date of decision: 27.08.2015

Dalbir Chand and others

..... Appellants

versus

Jai Parkash

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.D.K.Bhatti, Advocate for the appellants
Mr.R.S.Bajaj, Advocate for the respondent

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)

Impugned in the present regular second appeal is the judgment and decree dated 16.8.2011, passed by the learned Additional District Judge Jalandhar, affirming that of learned Additional Civil Judge, Senior Division, Nakodar dated 12.10.2009, vide which, suit of the plaintiff -respondent for permanent injunction was decreed to the effect that the defendants -appellants were restrained from placing/ affixing any girder, 'Ballas' and any kind of lintel on the western wall of 1st floor of the house of the plaintiff.

The brief controversy is that according to the plaintiff, the western wall adjoining the house of the defendants is his exclusive wall and that defendants want to place girder, 'Ballas' and lintel on the western wall of 1st floor of the house of the plaintiff. Plaintiff

claimed that he has purchased this property from one Prem Piara vide sale deed dated 13.12.2002.

The stand of the defendants before the lower Court was that the wall in question is joint between the parties. It was further pleaded that the space for Almira has been left there and there is also one space for '*alla* ' and space for placing '*Ballas*'. Learned Additional Civil Judge, Senior Division, Nakodar, after discussing the evidence of both the parties came to the conclusion that both the parties have not constructed their house. The house in possession of the plaintiff was constructed earlier in time by his predecessor Naranjan Singh about 50-60 years ago. House in possession of the defendant was constructed later on after the construction of hosue of plaintiff. Therefore, it was concluded that the western wall is in the exclusive possession of the plaintiff and accordingly injunction was granted.

Before the first appellate Court, plea was raised that the report of the Local Commissioner has been ignored by the lower Court, wherein it was reported that there exists space for Almirah and that roof of house of both the parties rests on the joint wall. It was pleaded before the first appellate Court that there exists '*allas*' in the wall towards defendants side and same is always left to show that it is a joint wall. It was further argued that wall is of 13" in width on the ground floor and on the first floor, the plaintiff has himself raised wall of 4" over the wall in dispute which also goes to show that it is a joint wall of the parties. However, this plea did not find favour with the first appellate Court nor the site plan produced by the defendants was

relied upon. Accordingly, findings of the lower Court were affirmed.

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

Learned counsel for the appellant has argued that in this case, findings recorded by both the Courts below are perverted. Therefore, these can be interfered in the regular second appeal. It has been argued that the report of the Local Commissioner has been ignored. The site plan produced by the defendants has been ignored and the other fact that the width of the wall is 13" on the ground floor and on the first floor plaintiff has raised wall of 4" over the wall in dispute has been ignored.

After going through the judgments of both the Courts below, I am of the view that the house of the plaintiff was constructed earlier in time which go to show that the disputed wall was exclusively constructed by the predecessor of the plaintiff. Now if the defendants claim that it is joint wall, then they are required to show that as to how it became joint? For that purpose, the defendants could claim that they had paid the part of the costs of the wall or that some other settlement had taken place. However, there is no such plea. The mere fact that space for Almirah or '*alla*' is left on the wall towards the side of the house of defendant does not mean that the wall was jointly constructed and it was left to be joint with the defendants. Similarly, if the plaintiff has raised construction over portion of the wall that does not mean that plaintiff had admitted that it is joint wall. Admittedly, in this case, it is proved that the wall was initially constructed by the predecessor of the plaintiff. It was for

defendants to prove that it is a joint wall which they have failed to prove. The presumption cannot be drawn from the facts stated by the defendants. These are only the findings of facts. No question of law much less substantial question of law arises in the present case.

Learned counsel for the appellant has produced the authorities in Ramji Rai & another v. Jagdish Mallah (Dead) through Lrs and another, 2007(3) RCR (Civil) 680, Sardari Lal Gupta v. Siri Krishan Aggarwal, 1984 AIR (Punjab) 439, Bishan Dass Saini and others v. Roshan Lal and others, 1990(2) LJR 200. However, the short question before this Court is as to whether any substantial question of law arises in this case. This Court has found that no substantial question of law arises. Therefore, no interference can be made in the concurrent findings recorded by both the Courts below.

Hence, the appeal is dismissed.

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

27.08.2015
gk

(Kuldip Singh)
Judge