

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

102**RSA No.302 of 2012(O & M)****Date of Decision:16.11.2015**

Wazir Chand and others

....appellants

Versus

Lekh Raj and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI**1.Whether Reporters of local papers may be allowed to see the judgement?****2. To be referred to the Reporters or not?****3. Whether the judgment should be reported in the Digest?**

Present: Mr.Abhishek Singla, Advocate for
Mr.R.K.Bansal, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

In a suit filed by the plaintiffs-appellants, they claimed a decree for permanent injunction as also mandatory injunction. The trial Court vide judgement and decree dated 24.01.2011, decreed the suit and as a result defendants No.1 to 3 were permanently restrained from interfering in the use of the stairs, the approach passage as depicted in the headnote of the plaint and further directed them to remove the door as also the wall constructed by them.

The appeal preferred by defendants No.1 to 3-respondents was partially accepted, for the decree granted by the trial Court as regards mandatory injunction, directing defendants No.1 to 3 to close the door opened by them in the wall of their own shop as also to demolish the wall, purportedly raised by them, was set aside. This is how, plaintiffs are before this Court.

I have heard learned counsel for the appellants and perused the paper book.

On a due and comprehensive consideration of the matter in issue and the evidence on record, Appellate Court concluded that sale deed (Ex.P4) brought on record by plaintiff Wazir Chand showed that he had purchased shop No.4 measuring 8' x 32' and likewise, defendants No.1 to 3 had purchased a shop depicted in yellow colour in the site plan, pursuant to the registered sale deeds Ex.P5 and Ex.P6, along with the right to raise construction on the roof. Recitals in the sale deeds did not indicate that the walls of the shop of defendants No.1 to 3 were common with Som Nath (plaintiff No.2) on the southern side or with Wazir Chand (plaintiff No.1) on the northern side. In fact, Wazir Chand had opened a door in the northern wall by claiming himself to be the exclusive owner thereof, and, thus, had no locus to object or ask defendants No.1 to 3 to close the door which they had opened in their own wall on the northern side of their shop, for free use of the stairs. Further, nothing was brought on record, least any cogent or credible evidence, to show that defendants No.1 to 3 by opening the door had caused any obstruction in the right of the plaintiffs to use the passage. That being so, it was concluded that the trial Court had erred by directing defendants No.1 to 3 to close the door opened by them in their own wall. As regards the injunction to demolish the wall, it was observed that the case set out by the plaintiffs was that by constructing the said wall, defendants No.1 to 3 had obstructed the use of the passage by the plaintiffs to reach their shop. However,

cross examination of plaintiff Som Nath (PW5) revealed that he did not know whether the door in the shop of Wazir Chand even opened in the passage or not. He also admitted that as per the recitals in the sale deed, staircase was kept common. In any case, the plaintiffs claimed a decree for mandatory injunction, directing defendants No.1 to 3 to remove the alleged wall, thus, the onus lay upon them to prove that defendants No.1 to 3 had indeed obstructed the passage by raising the wall in the passage. However, no cogent evidence was brought on record to substantiate the said plea. Therefore, trial Court also erred in directing defendants No.1 to 3 to remove/demolish the alleged wall. As regards the findings that the staircase was common, the finding arrived at by the trial Court was affirmed, and, as a result defendants No.1 to 3 were enjoined from interfering in the right of the plaintiffs to use the stairs.

Learned counsel for the appellants could not point out as to how the conclusion that has been arrived at by the first Appellate Court was either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

16.11.2015

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I attest to the accuracy and
integrity of this document

(ARUN PALLI)
JUDGE