

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 4475 of 2013 (O&M)
Date of decision: 26.5.2015

Sumer Singh Saini

.. Appellant

v.

Municipal Committee, Kalka and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rakesh Dhiman, Advocate for the appellant.

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Rajesh Bindal J.

The plaintiff has filed the present appeal impugning the judgments and decrees of both the courts below, whereby the relief of permanent injunction was declined to him. He filed the suit for permanent and mandatory injunction restraining respondents No. 3 and 4 from parking their vehicles in the passage/gali restricting ingress and outgress to the house of the appellant and other inhabitants of the locality. Mandatory injunction was sought to remove cemented lintel on the drain as shown in the site plan. The trial court dismissed the suit. However, the learned lower appellate court, while granting the relief of mandatory injunction directing replacement of cemented lintel with a 'zaali' to ensure free flow of dirty water in the drain, dismissed the claim regarding permanent injunction.

While impugning the judgments and decrees of both the courts below declining the relief of permanent injunction, learned counsel for the appellant submitted that the width of the street in front of the house of the appellant is merely 10 feet. It is a dead street with no opening on the other side. The other residents of the street are parking their vehicles in the street leaving no space for ingress and outgress to the house of the appellant. The

appellant even cannot take out his scooter, which is disturbing his day to day life, hence, denial of relief of injunction is illegal.

After hearing learned counsel for the appellant, I do not find any reason to interfere with the judgments and decrees of both the courts below declining injunction to the appellant. The house of the appellant is situated at a corner. The dispute is pertaining to the area forming part of a closed street, which is 10 feet. The house of respondents No. 3 and 4 is located at the dead end of the street. Another resident of the street, namely, Prem, as is evident from the site plan (Ex. P1), has not been impleaded as defendant in the suit. The appellant has access to his house from the street in question as well as from the road on the other side, the plot being corner. Defendants/ respondents No. 3 and 4 and other residents of the dead street must be parking their vehicles in the street, to which the appellant, who is their neighbour, is objecting to. He not only objected to the parking of their vehicles but even objected to the cemented lintel on 4" wide drain which, according to him, restricted free flow of dirty water. The learned court below granted that relief and directed respondents No. 1 and 2 to replace the cemented lintel with a 'zaali', however, the relief of permanent injunction was rightly declined, as it was found that even if the cars of other residents of the street are parked in the street, the appellant has access to his house from other street and as such no inconvenience is caused to him. He has not produced any evidence to show that there had ever been any problem in case he wanted to use his gate in the street for taking out any vehicle, as is sought to be claimed. The court below has observed that even after parking of car, space is still left on a side through which movement is possible. It has further been noticed by the trial court that no other resident of the locality has come forward to support the case of the appellant-plaintiff. Despite availing 14 opportunities to lead evidence, his solitary statement was on record. The appellant is stated to be a senior citizen, who retired from service. The dispute with neighbours on trivial issue is not a healthy sign as the neighbours are expected to live as a family so that they can be helpful to each other in case of need.

In view of the aforesaid factual matrix on record, in my opinion, there is no error in the judgments and decrees of both the courts below. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

26.5.2015
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