

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

RSA No.2982 of 2015 (O&M)

Date of Decision: September 29, 2015

Prem Nath Tuli

.... Appellant

vs.

Jaspal Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Arun Abrol, Advocate for the appellant.

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 27.08.2014 passed by learned Addl. District Judge, Gurdaspur, affirming the judgment and decree dated 26.08.2011 passed by learned Civil Judge (Jr. Divn.), Gurdaspur, vide which the suit of the plaintiff for permanent injunction for restraining the defendant from closing the windows, ventilators, already existing in the house of the plaintiff towards the western side of the house, was dismissed.

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

Learned counsel for the appellant-plaintiff claims that window and ventilators exist on the western side of the house since

1947 when the house was constructed by Prithvi Chand. The plaintiff is living in the said house since 1969 as owner in possession. The house is situated in the abadi of village Kalanaur, Tehsil and District Gurdaspur, which is a small town and having Nagar Council. The plaintiff claims easementary rights.

While dismissing the suit, the lower court recorded the following findings:

“--- So, in the present case if the plaintiff has windows and ventilators on his western wall which is opened in the land of the defendant who has purchased subsequently then the plaintiff has no right to claim for injunction restraining the defendant for making construction in his own land because if this is allowed, then there would be no development of cities/towns because for example one who purchases the piece of land first and make construction of his house and opened windows and ventilators on every open side and thereby suppose there is no construction for the period of 20/30 years on that land and easementary right also accrues in favour of a person who has raised construction earlier then the other person who subsequently purchased the piece of land adjoining to that house, then the land would be un-useable because the person who has raised construction earlier would claim the easmentary right of free air and light towards that side, meaning thereby the land adjoining to that house in which a person opened his windows or ventilators becomes useless for all times to come, which is not legally possible because development of localities take its own time and it not possible to develop a piece of land by all the persons a the same very time....”

Therefore, the lower court refused to grant the discretionary relief of injunction to the plaintiff.

I am of the view that it is not the case of the plaintiff that on the other three sides, there is no window or ventilator. Consequently, there is no light and air from the other sides. Now, the defendant is constructing the house on the western side.

Learned counsel for the appellant-plaintiff has argued that he has no objection if the defendant leaves three feet space for the purpose of light and air.

I am of the view that when the plaintiff has three other sides and there is possibility of crossing of light and air, he cannot insist on light and air from the side of defendant. His claim is not proved. Therefore, the discretionary relief of the plaintiff was rightly refused by both the courts below. Only question of fact is involved. No substantial question of law point is involved.

Hence, the present regular second appeal stands dismissed.

September 29, 2015
sarita

(KULDIP SINGH)
JUDGE