

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

**C.M. NO.2418 C OF 2014 &**

**R.S.A. NO.1059 OF 2014**

**DATE OF DECISION: NOVEMBER 05, 2015**

Saroj Devi

.....Appellant

VERSUS

Satpal Singh and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH**

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. Rakesh Kumar Sharma, Advocate,  
for the appellant.

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**AUGUSTINE GEORGE MASIH, J. (ORAL)**

Challenge in this appeal is to the judgement and decree passed by the Additional District Judge, Nuh, dated 19.09.2013, whereby the appeal preferred by the respondent-plaintiffs against the judgement and decree dated 31.07.2013 passed by Civil Judge (Junior Division), Nuh, dismissing their suit for permanent injunction, has been partly allowed.

It is the contention of learned counsel for the appellant that injunction, which has been granted in favour of the respondent-plaintiffs, restraining the appellant-defendant from constructing window, door, sun shade (*Chajja*) towards the street, cannot be sustained in the light of the fact that five feet wide street is not the exclusive ownership of the respondent-plaintiffs as has been held by both the Courts below. His further submission

is that the window, door and the gate admittedly have been constructed prior to the filing of the suit, which open on the road and a finding has also been given by the Courts below that to protect the window and the door from the vagaries of the nature and inclement weather, projection is required and this would not amount to any encroachment upon the street. The street has been found to be jointly owned and being used by appellant-defendant and the respondent-plaintiffs and, thus, the appellant-defendant has a right to construct a projection/sun shade towards the street. Prayer has, thus, been made for setting-aside the judgement and decree passed by the Additional District Judge, Nuh and restoration of the judgement and decree passed by the Civil Judge (Junior Division), Nuh.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgements.

These contentions, as have been raised by counsel for the appellant, cannot be accepted as admittedly the street is just five feet wide, which is being used as a passage to the house of the respondent-plaintiffs. Since it is merely a five feet wide road, projection/sun shade, if constructed towards the street, would virtually leave no space there and would also effect the very movement of respondent-plaintiffs and utilization of the said street. It is not in dispute that the ownership of the land of the appellant-defendant is upto the wall of the building, which has been constructed and any construction, which is beyond the said wall, would amount to encroachment. Thus, the assertion of counsel for the appellant that construction of projection/sun shade (*Chajja*) towards the street would not amount to encroachment, cannot be accepted. The injunction, which has

been granted by the learned lower Appellate Court, in any case also serves the public purpose, especially when the street is not the exclusive ownership of the appellant-defendant nor is it being exclusively used and enjoyed by her. Once the said property is being used by others as well, any construction, which may have the potential of obstructing the free use of the said street, cannot be permitted. The findings, thus, as recorded by the lower Appellate Court and the injunction granted cannot be faulted with.

The lower Appellate Court has returned findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.2418 C of 2014 for staying the operation of the impugned judgement and decree is also dismissed.

**November 05, 2015**  
**khurmi**

**( AUGUSTINE GEORGE MASIH )**  
**JUDGE**