

C.M. NO.10742 C OF 2015 (O&M)
R.S.A. NO.4474 OF 2015

:{ 1 }:

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

DATE OF DECISION: SEPTEMBER 03, 2015

Municipal Corporation, Hisar

.....Appellant

VERSUS

Ramji Lal

....Respondent

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. Dhiraj Chawla, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

There is a delay of 479 days in filing the appeal and the explanation which has been given for the delay is far from satisfactory and, thus, the appeal deserves dismissal on this ground alone. However, keeping in view the insistence on the part of the counsel, the matter was heard on merits also.

Challenge in the appeal is to the judgments and decree passed by the Courts below vide which the suit for permanent injunction filed by the respondent-plaintiff stands decreed.

It is the contention of counsel for the appellant that respondent-plaintiff, while constructing his house, has encroached upon the public street, qua which a compliant, Ex.D1, was made by the residents of the

locality to the Deputy Superintendent of Police, Hisar and Deputy Commissioner, Hisar for removing the encroachment. The said application was sent by the Deputy Commissioner to the office of appellant-defendant for taking necessary action. Thereafter, on the basis of the report of the Naib Tehsildar dated 27.12.2005, Ex.D4, the appellant-defendant issued a notice dated 29.12.2005 under Section 181 of the Haryana Municipal Act, 1973 to the appellant-plaintiff for encroaching upon area measuring 15'x20' by constructing room and over area measuring 20'x2 ½' by constructing Barja. As per the counsel, the construction on the said plot was raised without the approval of the Municipal Corporation, Hisar and, therefore, the notice was rightly issued by appellant-defendant. Both the courts below have failed to appreciate this fact and, thus, the judgments and decree deserve to be set-aside.

Having considered the submissions made by counsel for the appellant and on going through the judgments passed by the Courts below with his assistance, I am of the considered view that the contentions as raised by counsel for the appellant cannot be accepted.

From the perusal of the judgments of the Courts below, it is apparent that the appellant-defendant has failed to produce on record any document to prove that the construction was raised by the respondent-plaintiff in the public street. Report of the Naib Tehsildar, on the basis of which notice dated 29.12.2005 was issued to the respondent-plaintiff, itself is in clouds as while submitting the said report, he had neither seen the record of the Municipal Corporation nor the Jamabandi, which fact has come in his cross-examination. No site plan has been attached with the report. No prior notice was given to the respondent-plaintiff by DW2 and,

thus, the report is not binding on him.

So far as ownership of the respondent-plaintiff is concerned, the same is proved from the copy of the sale deed dated 04.02.1997, Ex.P2 as also from copy of mutation No.4102, Ex.P4. There is nothing on record to say that the said documents are false and fabricated. No cogent or documentary evidence has been led to prove that the respondent-plaintiff has raised any construction in the public street. Therefore, no illegality or infirmity is found in the judgments passed by the Courts below.

In the light of the concurrent findings recorded by the Courts below, which are based upon proper appreciation of evidence brought on record, the same do not call for any interference by this Court. Further there being no substantial question of law, which arises in the present appeal, the same deserve dismissal.

In view of the above, the appeal stands dismissed.

September 03, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE