

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 263 of 2014 (O/M)
Date of decision : 17.11.2015

Municipal Council, Phagwara and another Appellants

Versus

Naranjan Singh Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Modi, Advocate, for the appellants.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 13.9.2013, passed by the learned Additional District Judge, Kapurthala, affirming the judgment and decree dated 14.2.2012, passed by the learned Civil Judge (Junior Division), Phagwara, vide which the suit of the plaintiff for declaration and permanent injunction was decreed, thereby restraining the defendants/appellants from damaging, destroying and demolishing the suit shop on the basis of impugned notice.

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

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The perusal of the judgments of both the Courts below show that before the lower Court, the dispute was that the plaintiff, who owns a shop in Bansawala Bazar, Phagwara, had constructed two pillars in front of his shop on the municipal street/road and thereby made encroachment upon the same. A notice under Section 172 of the Punjab Municipal Act, 1911 (in short 'the Act') was issued, which was challenged by the plaintiff. The perusal of the judgments of both the Courts below show that both the Courts held that the defendants failed to prove that the said pillars have been constructed on the road belonging to the municipal committee or on the street belonging to the municipal committee. Before the lower Court, the municipal committee did not produce any record of the municipal street or road to prove that the construction was made on the municipal road/street. The lower Court further came to the conclusion that the prosecution could be launched against the encroacher if the period of more than three years have elapsed from the date of completion of construction. It was further held that within six months of illegal construction, penalty could be imposed as per Section 195 of the Act. In this way, nothing was done and, therefore, findings of facts have been recorded that defendants failed to prove that the said pillars have been constructed on the municipal street or road. Consequently, the suit was decreed. Only findings of facts have been recorded. No substantial question of law arises in the

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present appeal. Therefore, there is no ground to interfere in the concurrent findings of two Courts below. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

17.11.2015
sjks