

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

R.S.A.No.83 of 2015 (O&M)

Date of Decision: October 19th, 2015

Jagpal Singh

...Appellant

Versus

Sadhu Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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?

**Present: Mr.Malkeet Singh, Advocate,
for the appellant.**

AMIT RAWAL, J.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact and law, whereby suit for permanent injunction seeking restraint against the defendants from making any construction, projection, balcony or any type of other hindrance in the passage/blind street marked ABCD shown red in the site plan, has been dismissed by both the Courts below.

Mr.Malkeet Singh, learned counsel appearing on behalf of the appellant-plaintiff submits that there exists a residential house owned and possessed by the plaintiff shown in green colour in the site plan, situated at Village Bilga, Patti Neelowal, Tehsil Phillaur. There exists a passage in dispute from the time immemorial shown red in the site plan in between the residential house of the plaintiff and as well as the property of the

defendants. The approach of the passage to the house of the plaintiff is for the last more than fifty years. There exists one opening gate towards the southern side of passage in dispute. Another gate exists in the Eastern wall of the house of the plaintiff opening into the house in dispute. There is also one drain in the said passage abutting the wall of the house of the plaintiff. The passage in dispute is measuring 4'-6"x67', which is a blind street to the property of the plaintiff and defendants. The plaintiff had also no right to make any construction, hindrance, projection etc. The defendants intended to raise aforementioned construction, projection and balcony, which gave the cause of action to institute the aforementioned suit, though the defendants in the written statement submitted that the passage was not a street, but was owned by them. There was no door towards the western side of the aforementioned property of the house of the petitioner, but there was a wall, which was demolished in the absence of the defendants and thereafter installed the gate at the time of filing of the suit in order to show the suit property as street/blind street.

The learned counsel further submits that the Courts below have committed illegality and perversity in declining the relief by discarding the site plan, Ex.P1, and as well as the site plan of the defendants as both the site plans showed different directions, thus, submits that the appeal involves substantial questions of law to be determined by this Court.

I have heard the learned counsel for the appellant and appraised the paper book.

The plaintiff himself did not state regarding the correctness of the site plan and, therefore, his own document has not supported the

pleadings. Even the defendants had also not been able to show that they are owners of the street in dispute, but the fact remains that it is the plaintiff who has to stand on his own legs to seek the injunction. No evidence has been led to show that the passage as explained by the plaintiff existed at the spot. Since both the parties have not been able to prove the correct position at the site vis-a-vis the passage, the Courts below, by disbelieving both the site plans, dismissed the suit.

In order to seek injunction of such nature, it is essential requirement of law that the plaintiff has to give correct description of the property, which has not been proved by leading direct and cogent evidence and once such evidence is lacking, the injunction cannot be granted. The instant case is of a kind bare.

I do not intend to differ with the findings rendered by both the Courts below.

Accordingly, the appeal is dismissed.

October 19th, 2015
ramesh

(AMIT RAWAL)
JUDGE