

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

**RSA No.5527 of 2014 (O&M)
Date of decision:17.11.2015**

Smt. Kaushalya Devi

... Appellant

Vs.

Harbans Singh Sandhu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Padam Jain, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.13128-C of 2014

For the reasons stated in the application, duly supported by an affidavit, delay of 01 day in filing the appeal, is condoned.

C. M. stands disposed of.

RSA No.5527 of 2014 (O&M)

Appellant/defendant No.3 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for permanent injunction filed by respondent No.1/plaintiff vis-a-vis passage measuring 16', has been decreed.

Mr. Padam Jain, learned counsel for appellant/defendant

No.3 submits that in pursuance to the sale deed dated 26.07.2005 executed by defendants No.1 and 2, in respect of land measuring 14 bighas 19 biswas, the passage owned by defendant No.3, in her favour become owner of land in dispute, therefore, the passage belongs to appellant/defendant No.3. It is the discretion of the defendant to use in whatever manner and mode he wants. Section 17 of the Indian Easement Act, 1882 comes into play, therefore, the suit ex facie was not maintainable. Even otherwise, the sale deed dated 18.01.2000 has not been produced on record, therefore, respondent-plaintiff has failed to show ownership. He further submits that the entire onus as per Section 101 of the Indian Evidence Act to prove easementary rights/title of the passage was upon the respondent/plaintiff, but failed to discharge the same, therefore, both the Courts below have wrongly held that appellant/defendant No.3 has not discharged/rebutted the burden, thus, prays that substantial question of law arises for determination of this Court.

I have heard learned counsel for the appellant/defendant No.3 and appraised the judgments and decrees of the Courts below.

The sale deed, aforementioned, does not reflect the existence of the passage. Respondent-plaintiff has not claimed the title on the passage, but only claim in the suit is that his door and window opens towards the passage and appellant/defendant No.3 wanted to create hindrance or encroachment in the passage by raising construction and in these circumstances, the injunction was

sought. Draftsman-Indresh Khanna, PW1, prepared the site plan Ex.P1 after visiting the spot and found that there was a passage. In the jamabandi for the year 2006-07, Ex.D12, it is proved that respondent-plaintiff is in ownership of land measuring 14 bighas 19 biswas. Nothing contrary to the report of the draftsman has been proved on record, for example, demarcation report or application or assistance of the Court for appointment of revenue officer for demarcation of the area in order to co-relate the area mentioned in the jamabandi vis-a-vis passage was sought. In the absence of the identity of the property allegedly owned by the appellant, passage cannot be deemed to be in ownership of defendants No.1 and 2 or of defendant No.3. The appellant-defendant No.3 has failed to rebut the report of the draftsman, much less, site plan prepared by him, thus, both the Courts below have rightly declined her plea.

I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2015
savita