

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

RSA No. 6367 of 2014 (O&M)

Date of decision: August 14, 2015

Gurdev Singh and others

...Appellants

Versus

Harjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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. Gurcharan Dass, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

CM No. 15225 C of 2014

For the reasons stated in the application, the same is allowed.

The legal representatives of Hazura Singh are permitted to be brought on record.

Main case

1. The dispute is essentially between the brothers but in the array of parties, the plaintiffs would align themselves in four numbers and yet another brother's sons are the defendants. The father had brought about partition of the suit property which he purchased. The property abutted the main road. He provided for a passage and partitioned the properties either side of the passage in such a way that three houses were on the one side and three more houses on the other side of the passage. The houses have been constructed facing the passage. The passage itself was a private one and

they had demarcated the farthest end of the passage by raising a compound wall. Two of the brothers' sons who are the defendants had purchased a property in exchange on South of the passage beyond the wall that has been constructed on the extremity of the passage. The subsequent acquisition appears to be having an independent access for the defendants. All the same, the defendants wanted to open a door way to access the new acquisition and that is when the suit was filed for an injunction against demolishing the wall and setting up a passage for reaching the property subsequently acquired in exchange. In the document of exchange itself, there was no reference to the private passage as available for the said property for access. At the trial, the site plan had been given and there had been no contest about the correctness of the site plan. The defendants themselves had, according to the plaintiffs, admitted the correctness of the site plan. A Patwari examined gave evidence that the subsequent acquisition has an independent access to the property. The suit, after trial, was decreed providing for a decree for injunction from altering the character of the property till the property was partitioned. The defendants did not prefer an appeal against the decree and the plaintiffs alone filed the appeal against the judgment of the trial court declining the relief of injunction from demolishing the wall. The appellate Court dismissed the appeal and hence the second appeal.

2. The learned counsel reiterates the four points which are already enumerated as the points on which the plaintiffs has sought for the relief. On question of law, the counsel would argue that a right which they provided themselves as co-owners by providing a passage cannot be subjected to an additional burden for making access to a property which was

subsequently acquired. This would allow for a conversion of what was a private property amongst the members of the family to be thrown open for the other members of the public who may use it as a general path way. This argument, in my view, is not correct or the apprehension appropriate, for, there surely exists a difference between the right of easement which a person claims and a right which he claim as a co-proprietor. A passage that is carved out for the benefit ought not to be understood merely allowing for a right of easement for the defendant. An easement implies two tenements; a dominant tenement who has a right to use a property in a particular way and the servient tenement as a owner who has to take burden of such user by the dominant user. The law prohibits an additional burden of easement on servient tenement so that a person who exercises a right of easement cannot bring about on the land of which he is not the owner any new right. This restriction, however, does not arise in the case of proprietors who have undivided fractional shares in the property reserved in common by any of them. The passage which the father had allowed should carved out for the benefit of his sons to have use by the house built on either side of the passage must be still to be taken to be each of proprietors' ownership along with others. If two of the brothers who have not joined the plaintiffs have made a purchase or acquired property in exchange an extent immediately adjoining the wall that they have erected and would open the same for right of access to go to the subsequent acquisition, I will take it as a necessary incident of ownership that would make possible for them to have such an access. It is possible to raise a proposition that no co-owner will do any act in respect of property held in joint ownership any use which in derogation of such joint holding and without concurrence of others. In a normal

situation, the wall that they had raised at the end of the private passage for their own safety must remain as such and if any one co-owner wanted to demolish the same, it must be with the concurrence of the others. Such a concurrence would normally be even possible without much ado. If, in this case, the subsequent acquisition is of a property immediately adjoining their own present holding, no matter that the subsequent property had yet another way to reach the same and if one of the brothers has allowed for the gate to be opened, it ought not be taken as so serious an infraction of the plaintiffs' right to call for courts intervention. Declaratory rights or relief of injunction are essentially in the realm of equitable jurisdiction in England, which was statutorily brought and recognized in Indian courts through the Specific Relief Act. Injunction reliefs are always perceived through the prism of what is appropriate and just and it would surely allow for a reasonable play in the joints to exercise discretion by a Judge to ensure no serious hardship or harm would be caused, if injunction is not granted. I do not think setting up a gate at the wall which they have constructed would cause any serious infraction for an intervention in favour of the plaintiffs. The plaintiffs' apprehension is that it would be converted to a public passage is too early to anticipate. The plaintiffs will have adequate remedies open, if any members of the public seeks entry. They can regulate the access through the gate which is installed in the place where there exist the wall and make possible the access only to his other brothers and their children. It should serve the ends of justice. I clarify that the defendants against whom the plaintiffs could not secure a relief of injunction shall not allow for conversion of the property to public passage and the plaintiffs will be fully empowered to regulate the access only to the brothers and their children and that shall be

used in common in such manner of regulation as it is feasible and convenient to all the parties.

3. With these observations I give a despatch to the case against the appellants. And dismiss the appeal as not requiring any substantial question of law to be framed and heard after service of notice on respondents.

August 14, 2015
prem

(K.KANNAN)
JUDGE