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

RSA-2457-1986

Date of decision : 06.04.2016

Gian Singh

... Appellant

Versus

Ramesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumeet Sheokand, Advocate
for the appellant.

Mr. Harish Mehla, Advocate for
Mr. R.S. Cheema, Advocate
for the respondents.

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the decretal of the suit at the instance of the respondent-plaintiff, whereby, two shops alleged to have been constructed on the government path has been ordered to be demolished.

Mr. Sumeet Sheokand, learned counsel appearing on behalf of the appellant-defendant submits that though chakki has been closed down, but the fact remains that the plaintiffs did not raise any objection at the time of raising construction, when the chakki was erected. As per the averments made, there was a sufficient space for moving in and out. On 21.10.1985, the proceedings under the Haryana Public Premises and Land (Eviction and Rent

Recovery) Act , 1972 (hereinafter called 'the 1972 Act') were initiated and the ejectment order was passed by the Deputy Commissioner. However, in appeal, the matter was remanded back. He submits that once, the Government has taken a remedy for seeking ejectment, no cause of action arose in favour of the respondent-plaintiff, thus, urges this Court that trial Court on the basis of the oral and documentary evidence dismissed the suit and prays for affirmation of that judgment and decree of the trial Court as following substantial questions of law arise for determination”-

1. Whether the respondent-plaintiff has *locus standi* to file the suit?
2. Whether it was a public or private *rasta*?

Mr. Harish Mehla, learned counsel appearing on behalf of the respondents-plaintiffs submits that the trial Court embarked on a path unknown to the canons of law as it did not appreciate the oral and documentary evidence, though it has been proved on record that the suit was filed in the year 1978, whereas the shops were constructed in the year 1982-83 and relief of permanent injunction was converted into mandatory injunction and rightly so, on preponderance of the evidence, the lower Appellate Court ordered for demolition of the shops. The *rasta* was a public passage and being used by the plaintiffs, since long. Nobody is permitted to cause hindrance or to raise construction on the public passage. Though, the suit was not filed in representative capacity, but the jurisdiction of the Court was invoked for the alleged wrong and misuse and urges this Court that there is no illegality and perversity in the judgment and decree of the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the

paper book. No doubt that the regular second appeal arises out of a reversal of the judgment, but the fact remains that the appellant-defendant has raised unauthorized construction of shops on the *rasta*, which they could not have done, as it has been proved on record that the construction has been done on *rasta*. In this regard, the concerned Department of the Government has already initiated the proceedings for ejectment against the appellant-defendant, but the latest outcome of those proceedings is not available, however, I deem it appropriate to dispose of the appeal with a direction to the Deputy Commissioner, Kurukshetra to take action in accordance with law for ejectment of the appellant-defendant, in case, any action is not taken and in case, so taken, whether the order has been implemented or not?.

Keeping in view the facts and circumstances of the case, the judgment and decree of the lower Appellate Court is hereby affirmed. However, liberty is granted to the State to seek the ejectment in accordance with law. The substantial questions of law as noticed above are answered in favour of the respondent-plaintiff and against the appellant-defendant.

Accordingly, the appeal stands disposed of with the aforementioned terms.

06.04.2016
yogesh

(AMIT RAWAL)
JUDGE