

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 02, 2016

1. R.S.A.No.363 of 2008 (O&M)

S.D.Adarsh Jain Kanya Maha Vidyalaya, Sadhaura & another

...Appellants

Versus

Rajat Kumar & others

...Respondents

2. R.S.A.No.364 of 2008 (O&M)

Adarsh Jain Kanya Maha Vidyalaya, Sadhaura & another

...Appellants

Versus

Rajat Kumar & others

...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.Mahavir Sandhu, Advocate,
for the appellants in both the appeals.

Mr.Ashish Gupta, Advocate,
for respondent Nos.1 & 2 in both the appeals.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals bearing No.363 and 364 of 2008 as the common questions of law and facts involved in both the appeals are the same. The facts are being taken from RSA No.363 of 2008.

Appellant-defendants are aggrieved of the judgments and decrees rendered by both the Courts below, whereby the claim of the

respondent-plaintiffs seeking mandatory injunction for directing the respondents to remove the lintel of the school building placed on the wall of the house marked by letters AD shown as red in the site plan, situated in Sadhaura, Tehsil Jagadhri, District Yamuna Nagar bearing House No.8/189 and for permanent injunction restraining the defendants from putting any lintel on the wall, has been decreed by both the Courts below.

Mr.Mahavir Sandhu, learned counsel appearing on behalf of the appellant-defendants submits that the plaintiffs have not examined any attesting witness of the sale deed (Ex.P1) regarding the alleged ownership, yet the Courts below declined the objection on the ground that when the sale deed was executed, no objection was taken. He further submits that mere exhibition of the document does not dispense with the proof.

The plea with regard to construction of the wall, whether it is a joint or owned by one of the parties, has not yet established by virtue of the sale deed and other documents. He further submits that in Civil Suit No.426 of 1996 titled as Om Parkash (since deceased) through L.Rs Versus Adrash Jain, Kanya Mahavidalya, Sadhaura, a finding has come that it is a joint Galiyara, while the appellant-defendants are willing to compensate the respondent-plaintiffs with regard to the expenses incurred for erecting of the wall. The lintel placed on the wall has not caused any damage to the property. No surveyor or expert has been examined with regard to extent of damage and, therefore, the relief of permanent and mandatory injunction could not have been granted. All these aspects have not been noticed by the Courts below.

He further submits that respondent-plaintiffs have failed to prove on record by leading cogent, valid and convincing evidence that the

wall, which is in dispute is common of both the parties. DW-1 Raj Kumar had clearly deposed that respondent-plaintiffs and their family members had given the consent to the school to place the lintel on the said common wall, but all these material aspects have been over looked by both the Courts below. The spot inspection report prepared by the then Presiding Officer is, in fact, a regular judgment written in favour of the respondent-plaintiffs. The said document was required to be ignored as it is settled law that the spot inspection report prepared by the Presiding Officer cannot be read into evidence since it is merely corroborative piece of evidence to the other direct evidence led by the parties and, thus, urges this Court to formulate the following substantial questions of law as culled out in the grounds of appeal:-

- 1) Whether the wall in dispute was common of both the parties and the same is owned and possessed by them jointly, thus, the appellants-defendants had the right, title and interest therein and, therefore, the lintel placed thereon is legal, permissive and lawful and the same cannot be ordered to be removed and dismantled from the same?
- 2) Whether the wall, which is jointly owned and possessed by the parties, a lintel can be rested thereon by one of the party if required and the same can be ordered to be removed at the instance of the other party by seeking a decree for mandatory injunction against him and, therefore, the same can be held to be illegal?
- 3) Whether the spot inspection report prepared by learned Presiding Officer of the Court can be read into evidence or it cannot be read as evidence since it is merely corroborating piece of evidence to the other direct evidence led by the parties and, thus, the findings based upon the said corroborating piece of evidence can be held to be just, proper and legal?
- 4) Whether the impugned judgments and decrees passed by

the learned Courts below are, thus, patently illegal, wrong, erroneous and as such liable to be set aside?

Mr.Ashish Gupta, learned counsel appearing on behalf of the respondent-plaintiffs submits that concurrent findings cannot be interfered with. The compensation in terms of money would not be sufficient to set-aside the well reasoned judgments and decrees. On the contrary, appellant-defendants did not object to the exhibition of the sale deed and the contents of the same are to be read. The sale deed is 30 years old and, therefore, per se admissible as per Section 90 of the Indian Evidence Act. No consent was given to the School to rest the lintel on the common wall. The erection of the lintel on the common wall has caused damage, cracks in the property and mental harassment to the respondent-plaintiffs, which cannot be compensated in terms of money and, thus, urges this Court for affirming the findings rendered by both the Courts below.

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

The aforementioned Regular Second Appeals were disposed of by this Court vide order dated 25.11.2011, but the same were remanded back by the Hon'ble Supreme Court as substantial question of law had not been framed.

Since the trial Court in Civil Suit No.426 of 1996, referred above, has given a finding with regard to the wall being common, no appeal has been filed by the school. The said finding can always be looked into for adjudication of Civil Suit No.148 of 2000, out of which RSA No.363 of 2008 has arisen.

The construction had been raised long time back, which is 15' long common wall, where there is construction of few ventilators, which is

9” in width. In the absence of any valuer report, the loss allegedly put forth in the claim, has not been proved, yet in order to prevent miscarriage of justice and in order to do justice between the parties, I am of the view that the other party can be compensated in terms of money, to be assessed by the valuer to be appointed by the Executing Court and on the assessment of the same, the appellant-defendants shall deposit the amount forthwith. The amount already deposited shall be adjusted.

Even otherwise, the respondent-plaintiffs have not been able to prove the existing damage, much less led any evidence to show that the wall was not joint. Since the finding of other Court has already come, it cannot be ignored. Resultantly, the substantial questions are answered in favour of the appellant-defendants and against the respondent-plaintiffs and the impugned judgments and decrees are hereby set-aside.

The appeals are disposed of with a direction to the Executing Court to appoint a valuer and assess the compensation, which is normally required to be paid by the subsequent vendee, who raises construction on the common wall and thereafter pass an order in accordance with law.

May 02, 2016
ramesh

(AMIT RAWAL)
JUDGE