

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

1. RSA No.1625 of 2010 (O&M)
Date of decision : 14.03.2016

Sudesh Sood and another

...Appellants

Versus

Usha Monga and ors.

...Respondents

2. RSA No.4892 of 2010 (O&M)
Date of decision : 14.03.2016

Vinay Kumar Narula and another

...Appellants

Versus

Joginder Monga and ors.

...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. G.S. Bhatia, Advocate for the appellants
(In RSA No.1625 of 2010)

Mr. Sandeep Khunger, Advocate for the respondents.

Ms. Puja Chopra, Advocate for the appellants
(In RSA No.4892 of 2010)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two RSAs bearing No.1625 of 2010 titled as Sudesh Sood and another Vs. Usha Monga and ors. and RSA No.4892 of 2010 titled as Vinay Kumar Narula and another Vs. Joginder Monga and others.

Mr. G.S. Bhatia, learned counsel appearing on behalf of appellant in RSA No.1625 of 2010 submits that both the Courts below have committed illegality and perversity in dismissing the suit as from the site plan Ex.D1 it shows that at point-A, there is a gate carved out for the purpose of entry into the house of plaintiff and restrain the appellant not to raise construction or obstruction to such entry. This fact has totally been ignored by both the Courts below. There is no other passage or gali for ingress and outgress except at point-D for which Mr. Bhatia, submits on instructions from client that his client gives up, claim.

Ms. Puja Chopra, learned counsel appearing on behalf of appellants in RSA No.4892 of 2010 submits that as per site plan Ex.D1 Gali shown in blue colour is 10 feet, which is private arrangement between the Dr. Sood husband of Sudesh Sood, whereas gali shown red in colour at the time of the sale deed was 25 feet wide. However, after the purchase of the property by the defendant vide sale deed of 2006, it had been reduced by raising construction. It is in these circumstances, the suit was filed as it seriously prejudiced and effected the easementary rights and thus urges this Court to formulate substantial question of law. She further submits that by the act and conduct of the defendants, width of the street has been reduced to 5 feet, therefore, amendment of the suit was sought and relief of mandatory injunction was incorporated. However, both the courts below

ignored the aforementioned fact but dismissed suit on the ground that construction raised by the defendant is within their plots as there is no encroachment.

Mr. Sandeep Khunger, learned counsel appearing on behalf of respondents submits sale deed of the appellant-plaintiff is silent with regard to the width of the street shown in red colour. No evidence has been led to show that as when the defendant purchased the property, the width of the gali was 25 feet wide. The respondents-defendants raised the construction after obtaining site plan sanctioned from the Municipal Council whereas in sale deed of 2006, width has been mentioned as 5 feet wide. Question of fact has been adjudicated upon as there is no substantial question of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and of the view that vis-a-vis the claim of Sudesh Sood in RSA No.1625 of 2010 seeking restraint order against the respondent not to cause any obstruction at point-A in the site plan, there is some strength and force in the plea of Mr. Bhatia. The respondent-defendant cannot injunct the ingress and outgress and entry of the appellant-plaintiff at point-A to C for the reasons, that the appellant-plaintiff has given up his claim with regard to gate at point-D, in essence, there would be no other way for entrance to the house of the appellant-plaintiff. This fact has totally been ignored by both the Courts below as observation of mine are based upon the site plan Ex.D1, which itself shows that there is gate at point-A.

Following questions of law arises for determination by this Court:-

1. Whether the appellants-plaintiffs are entitled to injunction against the respondents-defendants vis-a-vis point-A to C in site plan Ex.D1 or not?
2. Whether the Courts below have committed illegality and perversity?

In view of what has been noticed above, I am of the view that substantial question of law aforementioned is liable to be answered in favour of appellants-plaintiffs and against the respondents-defendants. They are restrained from causing any obstruction or construction or interference in the possession through themselves or their agents or servants etc. at point-A to C in the site plan Ex.D1. Accordingly, judgment and decree of both the Courts below are modified to the aforementioned extent and the suit is partly decreed. Decree sheet is ordered to be drawn.

As regards the claim of the appellants-plaintiffs namely Vinay Narula and Saroj Narula, I am of the view that there is already passage starting with the 9' 9" width which goes to the gate of the appellant-plaintiff shown in blue colour in the site plan Ex.D1. The sale deed relied upon by the appellant-plaintiffs does not depict the width of the gali to be 25 feet, behind the houses of the appellant-plaintiff which is shown red in colour, whereas on the contrary, sale deed of the respondent-defendants shows the width of the passage as 5 feet. In the absence of the direct and cogent and concrete evidence, much less, any demarcation report prior to the purchase or the subsequent purchase or raising of the construction, in my view the appellant has failed to prove the width of the lane measuring 25 feet.

However, the respondent-defendants are hereby restrained from raising

further construction by causing obstruction, much less, as they have already undertaken before the trial court by not reducing the width of the street that is beyond 5 feet as shown red in colour as Ex.D1. Since there is no obstruction to the ingress and outgress of the appellant-plaintiff as per the passage which goes to the house of the appellant-plaintiff shown blue in colour as Ex.D1, I am of the view that both the Courts below have rightly exercised discretion.

Keeping in view the aforementioned finding, judgment and decree of the lower Appellate Court are hereby affirmed with the observations that the respondents-defendants shall not obstruct or interfere or by any manner through agents etc., much less, reduce the width of the street shown as 5 feet already shown in the site plan Ex.D1 in civil suit titled as Vinay Kumar Narula Vs. Joginder Monga and ors.

With the aforementioned observations, both the regular second appeals are disposed of.

14.03.2016

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**(AMIT RAWAL)
JUDGE**