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

**RSA-4134-2010 (O&M)
Date of decision : 29.08.2016**

Bijender Singh and others

... Appellants

Versus

Beena Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tejender K. Joshi, Advocate
for the appellants.

Mr. N.S. Shekhawat, Advocate
for the respondent.

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 appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit seeking injunction against the respondent-defendant from preventing the plaintiffs to use the disputed property and removing of the water supply line through the street with a further restraint order from alienating the suit land from the other persons, has been dismissed by both the Courts below.

Mr. Tejender K. Joshi, learned counsel appearing on behalf of the appellants-plaintiffs submit that suit was based upon the aforementioned pleadings, that the plaintiffs had purchased the aforementioned property and had been using the street i.e. common path left by the defendant to the house of the plaintiffs which had been used by the inhabitants of the locality. In support of his contentions, he relied upon the site plan Ex.PW-3/A and also

the report of Local Commissioner Ex.PW-1/A. He submits that before the lower Appellate Court, an application for additional evidence was moved to bring on record the documents Annexures P-1, P-2 and P-3 that there had already been a judgment with regard to the property and therefore, injunction as noticed above is liable to be passed in their favour.

He further submits that the appellants-plaintiffs have purchased the plots from the respondent-defendant and constructed their house after getting the site plan approved from the Municipal Council. The common passage was used by the appellants-plaintiff and the other inhabitants. The Courts below have wrongly held that the disputed property is not a public street, whereas it has been proved on record to be common passage. Admitted position is that plots sold by the respondent-defendant on the basis of the power of attorney and sale deeds were not executed just to circumvent the provisions of the Haryana Urban Development Authority Act. The Courts below have wrongly held that the appellants-plaintiffs cannot be true owner to give the land for supply of water to their houses. Even an application was moved before the trial Court for appropriate direction to the Revenue Authorities to allocate *rasta* as per the revenue record, but the same remained undecided. The trial Court lost the site of the plot that the appellants-plaintiffs purchased the plots from the defendants as they had not denied. All these facts have erroneously been discarded by both the Courts below. The appellants-plaintiffs never stated that they purchased the plot through registered sale deeds, but the fact was that they came into possession on account of issuance of power of attorney in their favour. All these facts have not been taken into consideration, much less, the additional evidence, therefore, there is a gross illegality and perversity in

the findings under challenge, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. N.S. Shekhawat, learned counsel appearing on behalf of the respondent-defendant submits that the appellants-plaintiffs have miserably failed to prove the ownership, much less, the attorneys. The site plan did not connect with the suit property/identity of the property. The plaintiffs have their own passage for ingress and egress. The passage allegedly sought to be restrained is a private one and belonging to the defendant. The report of the Local Commissioner was prepared at the back of the defendant and the plaintiffs never restrained from alienating the land, rightly so, the injunction as sought has been declined, thus, urges this Court for affirming the findings under challenge as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submission of Mr. Tejender K. Joshi, for, the report of the Local Commissioner had been prepared at the back of the defendant. The site plan is a self-serving document of the plaintiffs and it does not prove the existence of the passage. It was imperative for the appellants-plaintiffs to get the *aks shajra* proved on record to connect that there was a passage in the revenue record instead of moving an application for appropriate direction. The plea of Mr. Joshi qua application remained undecided is totally misplaced. The plaintiffs have not been able to prove the ownership. The plea with regard to the construction of the houses as per the sanction given by the Municipal Council is neither here nor, either any site plan or order of sanction has been placed on record. Even PW-5 admitted that

Municipal Council has not constructed any road. PW-4 had admitted in the cross-examination that there is other way to their houses. Once, it is so, the restraint order of alleged obstruction was not called. In my view, the appellants-plaintiffs have miserably failed to establish any right. The plea qua additional evidence is also misplaced as in the earlier round of litigation, as the appellants have failed to connect suit properties or parties. The appellants-plaintiffs cannot take advantage of the commonness in the name having failed to establish that the Sarla was the daughter of Hari Krishan.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal is dismissed.

29.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No