

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

R.S.A.No.2049 of 2011 (O&M)

Date of Decision: September 21st, 2016

Mohinder Kaur

...Appellant

Versus

Daya Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Amarjit Markan, Advocate,
for the appellant.**

**Mr.Sandeep Arora, Advocate,
for the respondent.**

AMIT RAWAL, J. (Oral)

CM No.12629-C of 2016

Prayer in the application is for impleading the legal representative of respondent Daya Singh. Allowed subject to just exceptions. Applicant is impleaded as L.R. Of the respondent for the purpose of prosecuting this case only.

Application stands allowed.

RSA No.2049 of 2011

Appellant-defendant is aggrieved of the concurrent findings rendered by the Courts below regarding the street shown in the site plan Ex.P3 in red colour that it is a public street and vested in the Gram Panchayat.

Mr.Amarjit Markan, learned counsel for the appellant-defendant submits that the ventilators and the gates etc. are already in the

street and, therefore, he has no objection with regard to the same, thus, the finding qua the street is neither here nor as there is no evidence. Particularly in a suit for injunction, the finding could not have been arrived at as the Rasta is only upto the house of Mohinder Kaur. It is not connected with two Rastas on the northern and southern sides and, therefore, the finding qua that effect is liable to be expunged.

Per contra, Mr.Sandeep Arora, learned counsel for the respondent-plaintiff submits that as per the findings given by the trial Court in Para 9 of the judgment, it has been found that the respondent-plaintiff is owner of the house shown yellow in the site plan and, therefore, the injunction granted is based upon the appreciation of oral and documentary evidence. The doors, ventilators, windows etc. of the plaintiff opens in the street in dispute. They shall not create any hindrance for the use of the said street and, therefore, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that in the absence of any evidence, particularly in the suit for injunction, the Courts below could not have pondered upon the title of the street to be public or a private one. The findings, in my view, are not tenable in the eyes of law, for, no evidence has come on record, much less aks-shijra. Even it falls in the Lal Lakir to show that it is a public street, none of the parties shall be able to encroach upon the aforementioned street which is existing today, but I would be accepting the finding rendered by the Courts below that it is a public street. The findings of the Courts below with regard to the street being a public are hereby accepted affirming the injunction in favour of the respondent-plaintiff.

Appeal stands disposed of.

September 21st, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No