

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1867 of 2012 (O&M)

Date of Decision: May 05, 2016

Seema Gandhi

...Appellant

Versus

Balwant Singh & 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.H.K.Aurora, Advocate,
for the appellant.

Ms.Meena Bansal, Advocate,
for respondent No.5.

AMIT RAWAL, J. (Oral)

Appellant-defendant No.3 is aggrieved of the concurrent findings of fact, whereby mandatory injunction has been passed against the defendants to remove the illegal construction as described in the headnote of the plaint, within two months from the date of passing of the judgment and decree of the trial Court dated 12.10.2009.

Mr.H.K.Aurora, learned counsel appearing on behalf of appellant-defendant No.3 submits that the property in dispute was purchased by defendant No.3 vide sale deed dated 10.6.2008 from Kishan Lal defendant No.1. While raising construction, Municipal Council, Hoshiarpur issued a notice under Section 195 of the Punjab Municipal Act regarding the construction being not in conformity with the bye-laws, much less the sanctioned site plan. The matter was referred to the Lok Adalat and

the alleged violation, which was permissible in nature, was compounded and the witness to this effect was also examined, who deposed that as per the site plan, there is no street in the site in dispute, but the trial Court and the Lower Appellate Court have placed heavy reliance on the statement of DW-4 Ranjit Singh, who, in cross-examination, stated that there is street on the eastern side of Balwant Singh-plaintiff and in view of such fact, the averment of the respondent-plaintiff seeking restraint order against the defendants from raising construction on private street, has been accepted. He further submits that these findings are not only fallacious, but illegal and erroneous, much less not sustainable in the eyes of law and, thus, urges this Court to formulate the following substantial questions of law for determination by this Court:-

- 1) Whether the judgments and decrees passed by both the ld.courts below are not contrary to the record of the Municipal Council, Hoshiarpur?
- 2) Whether the findings of the ld.Courts below are not perverse?

The respondent-plaintiff has been served as noticed by this Court, but there is no representation on his behalf.

Ms.Meena Bansal, Advocate has put in appearance on behalf of respondent No.5-Municipal Council and urges that DW-1 Vijay Kumar Clerk, Municipal Council, Hoshiarpur has stated that as per the site plan, there is no street and the order of the Lok Adalat was also admitted to be correct.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the submission of Mr.Aurora, for, DW-1 Vijay Kumar, aforementioned,

the judgments and decrees of both the Courts below are illegal and perverse. Accordingly, the same are set-aside. The questions of law, noticed above, are answered in favour of appellant-defendant No.3 and against the respondent-plaintiff. Suit stands dismissed.

Appeal stands allowed.

May 05, 2016
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(AMIT RAWAL)
JUDGE