

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

RSA No.476 of 2011 (O&M)
Date of decision : 25.02.2016

Babu Ram

...Appellant

Versus

Balraj and another (deceased through LRs)

...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. Arvind Mittal, Advocate for the appellant.

Mr. S.D. Sharma, Sr. Advocate with
Ms. Bindu Goel, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff approached the trial Court for seeking injunction against the respondent-defendant from not encroaching or interfering into the passage measuring 11 ½ feet shown in the site plan attached with the plaint with alternative relief of mandatory injunction, in case encroachment has been raised, same may be removed.

Mr. Arvind Mittal, learned counsel appearing on behalf of appellant submits that trial Court partly decreed the suit by treating the passage as 4 feet, whereas umpteen number of documentary evidence has

been placed on record, much less, report of Local Commissioner shows that passage was 11 ½ feet. Vis-a-vis encroachment, the trial Court should have granted mandatory injunction for removing of encroachment. He further submits that there is categorical pleading in the plaint that the property came into the share of the plaintiff and defendant No.1 from their forefathers and common passage as shown in yellow and red colour in the site plan is in existence since time immemorial. As per the family settlement, it was kept as common passage and now the passage in dispute which only goes to the house of the plaintiff was sought to be encroached and, therefore cause of action arose for filing the suit. Both the Courts below have mis-read and mis-construed the report of Local Commissioner and as well as site plan Ex.P1 and thus urges to this Court to formulate the substantial questions of law.

Mr. S.D. Sharma, learned Senior Counsel, assisted by Ms. Bindu Goel, Advocate for respondents submits that it was categorically stated in the written statement that prior to the demolition of the building of defendant No.1, the courtyard was 8 feet wide and not 11 ½ feet wide. The entire area under the abadi in the lal lakeer was jointly owned and possessed by the co-owners. The site plan was seriously disputed whereas as per the report of the Local Commissioner appointed at the instance of the plaintiff, found that passage was 4 feet wide and rightly so, the trial Court decreed the suit vis-a-vis the 4 feet wide passage. Site plan Ex.P1 shows the correct position drawn at the spot which has been taken into consideration and urges this Court for dismissal of the appeal as 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 there is no merit in the appeal for the reasons that PW3 in examination-in-chief claimed the width of the disputed passage as 8 feet but in the cross-examination did not corroborate this version. He further submits that only cycle and scooter can pass through the passage and not car. In my view, the appellant-plaintiff has failed to prove the existence of the passage as 11 ½ feet prior to the filing of the suit during the pendency. In the absence of the same, plaintiff has failed to discharge the onus as enshrined as per provision of Section 101 of the Indian Evidence Act. It is plaintiff who has to stand on his own legs and cannot find the fault in the weakness or the evidence of the defendants. Report of Local Commissioner is unambiguously leaves no manner of doubt that the passage is 4 feet and not 11 ½ feet as claimed by the plaintiff.

In view of what has been observed above, I am of the view that decree passed by the trial Court vis-a-vis 4 feet is perfect, legal and justified.

No interference is warranted, much less, no substantial question of law arises for determination by this Court.

Appeal is dismissed.

25.02.2016

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**(AMIT RAWAL)
JUDGE**