

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

**RSA No.4925 of 2011 (O&M)
Date of decision:22.08.2016**

Mal Singh
Vs. ... Appellant

Gurwinder Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ram Lal Gupta, Advocate
for the appellant.

Mr. Akshay Jain, Advocate
for respondents No.1, 3 and 5.

AMIT RAWAL J.

Appellant-defendant No.2 is aggrieved of the concurrent findings of facts and law, whereby, he along with defendant No.1 has been restrained from encroaching upon 20 feet wide public street illegally and forcibly.

Mr. Ram Lal Gupta, learned counsel appearing on behalf of appellant-defendant No.2 has drawn the attention of this Court to the notice of motion order dated 14.12.2011 to contend that appellant had purchased the property vide sale deed dated 15.11.1978 and as per the sale deed, street on the Western side is 3 karams, meaning thereby approximately 16 ½ feet wide as one karam is 5 ½ feet, whereas, the property was purchased by one of the respondent on 29.11.1999. During the pendency of the civil suit, Local Commissioner was appointed and as per report of the Local

Commissioner, at certain places, the width of the street is 14 feet, 19 feet and 15 feet, respectively, that means the street is not 20 feet in width. He further submits that the Lower Appellate Court has committed illegality and perversity in not noticing the aforementioned fact. The Courts below have misread and overlooked the cross examination of PW2 - Gurvinder Singh, who candidly admitted that there was no public street in width. He further submits that both the Courts below have rendered the findings of facts which are beyond the pleadings, much less, there is a misconstrual and misreading of the sale deed Ex.DW1/B. In fact, the same has not been proved, in accordance with law. No evidence has been led by the plaintiffs to prove that street in question is a public street, therefore, the judgments and decrees of the Courts below are liable to be set aside. PW1-Ved Parkash has referred to the photocopy of the sale deed, Ex.P1, who has not appeared in the witness box for cross examination, yet the suit, aforementioned has been decreed. Gurvinder Singh, in cross examination admitted that defendants had constructed the house after leaving 20 feet width street yet the suit had been filed seeking restraint order against the defendants from encroaching the suit property. In fact, suit was not maintainable. He, thus, urges this Court for formulating the substantial questions of law as culled out in the memorandum of appeal.

Per contra, Mr. Akshay Jain, learned counsel appearing on behalf of respondents No.1, 4 and 5 submits that plaintiffs have been able to prove the case as the order would apply to the plaintiffs themselves that they do not want to encroach upon the street left by erstwhile vendors for ingress

and outgress of the parties living in that area. The wife of Parminder Singh was also brought to rebut the property in dispute, much less, on which property the house has been constructed. The report of the Local Commissioner mentioned that width of street is little different but the fact remains that by relying upon the report, they permitted to cross the street, at least whatever little illegal encroachments have been done should not have been allowed to be perpetuated further. He also submits that no person living in the area has a right to encroach upon the street. In one of the sale deeds executed by defendant No.2 on behalf of the vendee, it is mentioned that width of the street left by vendor was 20 feet, while on other hand, they are claiming that in front of plot purchased by him, width of the street is 20 feet and thus, urges this Court for affirming the findings under challenge and being concurrent findings of facts cannot be set aside as no substantial question of law arises, much less, no case is made out for illegality and perversity.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

No doubt, as per the report of Local Commissioner, the street at some point is 14 feet, 15 feet and 19 feet as noticed above but the Local Commissioner has not been examined, much less, report has not been proved, therefore, there is no force and merit in the submissions of Mr. Ram Lal Gupta and thus, it is held that under these circumstances, the report of Local Commissioner is per se admissible. The other party is prevented from subjecting to cross examination in order to ascertain the factum of his visit

and contents of the report. In my view, no person has a right to encroach upon the public street when the erstwhile owners have left the street at the spot which is being used by the residents. PW2 - Gurwinder Singh, while appearing into witness box, reiterated the stand taken in the written statement and was cross examined in extensive and as per his statement, sale deed Ex.P2 was in favour of his wife in which the street has been shown as 20 feet wide. DW1-Mal Singh, while appearing as a defendant's witness has also admitted the sale deed Ex.DW1/B as he is a signatory of the said sale deed on behalf of the vendee. One sale deed Ex.D1 has been proved on record. Once no objection has been taken qua its mode of proof, the same can always be looked into. Even in the aforementioned sale deed street at the spot has been shown 20 feet wide. Once the sale deed Ex.D1 has also been brought on record which shows that street is 3 karams in width, meaning thereby approximately $16 \frac{1}{2}$ feet wide as one karam is $5 \frac{1}{2}$ feet. Thus, I am of the view that since Mal Singh has admitted that street is more than 14 feet wide, it cannot be looked into that street is $16 \frac{1}{2}$ feet or 20 feet. In fact, the injunction should apply to all the parties to the lis instead of only to the defendants. I am of the view that neither the plaintiffs nor the defendants or any other resident of the area should be permitted to encroach upon the width of street which is existing at the time of filing of suit as noticed by the Courts below

In view of the aforementioned observations, I do not find any illegality and perversity in 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 adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 22, 2016
savita

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No