

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

RSA No.640 of 2011 (O&M)

Date of decision : 16.05.2016

Randhir Singh

...Appellant

Versus

Manpreet Kaur and others

...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. Vipin Mahajan, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by both the Courts below, whereby they have been enjoined not to interfere or to dispossess the respondent-plaintiff from the site plan Ex.PW6/A marked as ABCD.

Mr. Vipin Mahajan, learned counsel appearing on behalf of appellant-defendant submits that site plan Ex.PW6/A and Ex.D3, much less, of the local commissioner tallies with each other. Injunction has been sought qua ABCD as per site plan Ex.PW6/A whereas it should be ABEF, as EFCD is drain for which injunction has been sought and granted, in essence, respondent-plaintiff could not have shown to be in ownership or possession of the same. No injunction could be passed and thus urges this Court for

formulation of the following substantial questions of law:-

1. Whether the both the Ld. Courts below erred in not appreciating the pleadings in proper perspective.
2. Whether in the light of judgment Exhibit D-2 which relates to the same suit property as the one involved in the instant case, the plaintiff/respondents can maintain the present suit?
3. Whether the Courts below erred in holding that local commissioner has proved the possession of the plaintiff/respondents, whereas, the report is totally silent regarding possession of the plaintiffs over the property EFCD and as such there is complete misreading of evidence on the part of the ld. Lower Courts below?

The respondents vide order dated 13.01.2015 have been proceeded ex parte. Today also there is no representation, accordingly, I proceed to decide the appeal.

I have gone through the impugned judgment and decree and site plan Ex.PW5/C of local commissioner and of the view that as per the site plan Ex.PW6/A EFCD prescribes as open drain. Ownership of the respondent-plaintiff qua site plan ABEF is not disputed. Once all the aforementioned site plans reveal that there is 4 to 5 feet wide drain, the respondent-plaintiff could not have sought injunction of the same as defendants have also admitted the factum of the existence of the drain, much less, they have no right to claim ownership. Both the Courts below in my view have aberrated, rather, misappreciated the documentary evidence as injunction should have been confined to the area shown as ABEF in the site plan Ex.PW6/A instead of ABCD as it is not consonance with the site plans of local commissioner as Ex.PW5/C. Courts

below though observed that all the site plans are showing the existence of the property in correct perspective but ignored the factum of the existence of the drain by granting injunction.

In view of the aforementioned facts and circumstances, the substantial questions of law as noticed above are answered in favour of appellant-defendant and against respondent-plaintiff and judgment and decree of the courts below is hereby modified that injunction shall be only with regard to the area shown as ABEF in the site plan Ex.PW6/A.

Thus, impugned judgment and decree of both the courts below is modified to the extent, noticed above.

Appeal is partly allowed.

Decree sheet is ordered to be prepared.

16.05.2016

pawan

**(AMIT RAWAL)
JUDGE**