

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

RSA No.2625 of 2012
Date of decision : 01.02.2016

Shiv Dutt

...Appellant

Versus

Bijender Singh and another

...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. Shiv Kumar, Advocate for the appellant.

Mr. Kulbhushan Sharma, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree passed by the lower Appellate Court, whereby suit for permanent injunction restraining the defendants from encroaching any portion of the rasta of 15 feet on northern side as per the site plan of plot No.32 and 33, had been decreed.

Mr. Shiv Kumar, learned counsel appearing on behalf of appellant submits that site plan Ex.P1 shows the existence of possession of the plots. The sale deed dated 01.12.2004 showed that towards north side of the plot No.32 and 33, there is rasta of 15 feet which corroborates vide site

plan Ex.P1. The lower Appellate Court has erroneously held that rasta was on the southern side of the plot No.37 which was not the case pleaded in the plaint. The injunction was sought with regard to the plot No.32 and 33. Local Commissioner though has filed a report in favour of the defendant that there was no rasta/vacant land. Respondent had purchased the property measuring 120 square yards dated 10.05.1991, whereas appellant purchased in 2001 and thereafter sent legal notice dated 16.10.2006 Ex.PW1/B and the same was not replied. The story of non-appearance of the counsel has been coined for the first time in the written statement and, thus, prays that following substantial question of law arises for determination:-

1. Whether the judgment and decree rendered by the Ld. Appellate Court is sustainable in the eyes of law, much less, suffers from illegality and perversity as both the site plans Ex.P1 and Ex.D3 showed rasta of 15 feet to some extent but as per the site plan Ex.P1 rasta is to the end of the street.?

Mr. Kulbhushan Sharma, learned counsel appearing on behalf of respondents-defendants submits that defendant purchased the property, aforementioned, vide sale deed dated 10.05.1991 along with dimension, whereas sale deed Ex.P2 dated 01.12.2004 does not prescribe any dimension. In the absence of dimensions, the identity of the rasta is not proved. The sale deed does not prescribe the plot no.32 and 33 for which injunction has been sought. The lower appellate Court found that since the plaintiff purchased the property subsequently but failed to prove on record passage, much less, passage lead from pucca road to boundary wall of plot No.33/8/1 as reflected in report of the Local Commissioner Ex.D5 and not

towards the end of the street where the plots No.32 and 33 for which injunction has been sought. There is no illegality and perversity, much less, no substantial question of law arises for determination by this Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that appeal deserves to be allowed on the following reasons:-

The sale deed Ex.P2 provide northern side of the plot. The property measuring 120 square yards has been purchased by the plaintiff whereas rasta of 15 feet is also on northern side which would be southern side of the plot of the respondent-defendants. No doubt, the sale deed does not prescribe plot no. 32 and 33 but the dimension of the plot tallies with the sale deed. Even the area is also the same. This fact has not been noticed by the lower Appellate Court, while deciding appeal. The Lower Appellate Court only addressed one issue by referring to the contents of sale deed. Even Ex.D5 shows that rasta of 15 feet thus it amounts to alleged encroachment.

As per the averments of the plaintiff, rasta is temporary in nature and not pucca which is revealed from the photographs. It appears that respondent-defendants had encroached upon rasta as at that time plots purchased by the plaintiff were lying unused/vacant. It is only after the purchase of property, legal notice, preceding to filing of suit, was sent. Had there been any falsity, nothing prevented the defendants to rebut the same.

Keeping in view the aforementioned facts, substantial question of law arise is answered in favour of the appellant and against respondent.

Impugned judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Appeal is allowed.

01.02.2016

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**(AMIT RAWAL)
JUDGE**