

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

R.S.A.No.2663 of 2012 (O&M)

Date of Decision: April 22nd, 2016

Joginder Singh

...Appellant

Versus

Ramu & 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.C.Arora, Advocate,
for the appellant.**

None for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the dismissal of the suit claiming mandatory injunction with a direction to the respondents to remove a wall illegally constructed in the street in front and western side of his house.

Mr.H.C.Arora, learned counsel appearing on behalf of the appellant-plaintiff submits that during the pendency of the suit filed on 1.6.2006, the trial Court, on 7.4.2007, passed an interim order that the construction may go on, but it shall not affect the ingress and egress of the plaintiff. Keeping in view the aforementioned facts, the trial Court found that the construction raised is not affecting the ingress and egress of the plaintiff and, therefore, the wall was not illegally constructed, but the claim was declined. The fact remains that the construction is without any authority

or sanction and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

During the course of the hearing, Mr.Arora submits that the construction raised has not affected the ingress and egress of the plaintiff. In view of such situation, I am of the view that the relief sought in the suit has actually been indirectly granted as ingress and egress of the appellant has not been affected, thus, the mandatory injunction sought for removal of the illegal wall remained immaterial.

He further submits that as per the sale deed of the appellant-plaintiff dated 11.6.1990, 20' wide street has been shown on the western side, whereas the sale deeds placed on record on behalf of the defendants are of subsequent period, which do not reflect the existence of the street. Be that as it may, the fact remains that the sale deed would not clinch the issue, unless and until the demarcation of the property in terms of the sale deed and actual position is conducted. Once the appellant-plaintiff has failed to get the property demarcated, in my view, no cause of action accrued to the plaintiff to seek injunction alleging illegal construction of the wall.

He further submits that two sale deeds have been placed on record, but only one has been examined and another has not been proved. In the absence of the proof of the sale deed, the Court could not have relied upon the admissible evidence. In my view, the execution of the sale deed would be immaterial for the reason that the appellant-plaintiff did not demarcate the property before filing of the suit or during the pendency of the suit.

Keeping in view the aforementioned facts and circumstances, I do not intend to differ with the findings rendered by both the Courts below. No substantial question of law arises for determination.

Appeal stands dismissed.

April 22nd, 2016
ramesh

(AMIT RAWAL)
JUDGE