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

Date of decision : 22.03.2016

1.

RSA-3239-2012 (O&M)

Radhey Shyam

...Appellant

Versus

Atma Ram and another

...Respondents

2.

COCP-3150-2012 (O&M)

Radhey Shyam

...Appellant

Versus

Atma Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the appellant (in the appeal and petition).

Mr. Anurag Jain, Advocate
for the respondent(s) in the appeal and petition.

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?

AMIT RAWAL, J. (ORAL)

CM-3535-C-2016 IN RSA-3239-2012

Prayer in the application filed under Order 41 Rule 27 read with

Section 151 CPC is for leading additional evidence of the photographs

(Annexure R-1).

After arguing for sometime, learned counsel for the appellant seeks liberty to withdraw the present application.

Dismissed as withdrawn.

MAIN CASES

This order of mine shall dispose of **RSA No.3239 of 2012** titled as **“Radhey Shyam V/s Atma Ram and another”** and **COCP No.3150 of 2012** titled as **“Radhey Shyam V/s Atma Ram”**.

The appellant-plaintiff is aggrieved of the dismissal of the suit by the judgment and decree rendered by the the lower Appellate Court, in essence, the judgment and decree of trial Court has been set aside.

The case set up by the appellant-plaintiff in the plaint before the trial Court was that the appellant-plaintiff along with his family members are residing in the house and the door of the house abuts in the street as shown in red colour in the site plan. The street was left for their convenience and at the time of partition, therefore, the Municipal Council has no concern with the same. The defendants put soil and rodi (gravel) at the spot and wanted to raise the level of the street which was objected to, but of no avail, accordingly, the suit was filed.

Mr. Ajay Jain, learned counsel appearing on behalf of appellant-plaintiff submits that the trial Court on the basis of the oral and documentary evidence enjoined the defendants from raising any construction in the Gali/Street, in question, and also restrained the defendants from raising the level, if level is raised, directed to demolish the same. However, the lower

Appellate Court while relying upon the candid admission of the appellant-plaintiff in the examination-in-chief of having another door for his egress and ingress, declined the injunction as sought for and urges to this Court to formulate the substantial questions of law as culled out in the grounds of appeal. He further submits that it is totally misreading and misdirection of oral and documentary evidence, the lower Appellate Court has transgressed the evidence and gone in the arena of surmises and conjectures, thus, there is travesty of justice.

Mr. Anurag Jain, learned counsel appearing on behalf of the respondents-defendants submits that after the decision of the appeal, the defendants fixed the gate in the gali/street by increasing the level of the street. The street is a private but since, the appellant-plaintiff admitted having the egress and ingress through another door, he had no right and prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. No doubt the trial Court granted injunction as noticed above, but the lower Appellate Court on the basis of the candid admission in the examination-in-chief of the appellant-plaintiff, found that the street/gali is not only passage for his egress and ingress as there is another entry for his egress and ingress, thus, the injunction rights would not be effected. This Court vide order dated 25.01.2016, after hearing the arguments at length appointed Local Commissioner to ascertain whether the private street in front of the door of the plaintiff is uneven or not? The order dated 25.01.2016 reads thus:-

“Present: Mr. Ajay Jain, Advocate for the appellant.”

Mr. Anurag Jain, Advocate for respondent No.1.

After hearing arguments for sometime, it is expedient that in order to ascertain the plot in possession, whether the private street in front of the door of the plaintiff is uneven vis-a-vis the door of the respondents-defendants or not.

I appoint Mr. Manvinder Dalal, Advocate as Local Commissioner. Fees of the Local Commissioner is assessed as ₹ 30,000/- which shall be borne by the appellant-plaintiff.

Copy of the paper book along with site plan be handed over to the Local Commissioner. Local Commissioner shall visit the spot on 10.02.2016.

Adjourned to 22.03.2016 to await the report of Local Commissioner.

A photocopy of this order be placed on file of other connected case.”

However, application bearing No.1654-C of 2016 was filed for recalling/modifying the order dated 25.01.2016. It appears that the appellant-plaintiff prevented this Court to form an opinion as to whether there is actual alleged violation or not, which gave cause of action to seek injunction, rather was afraid of the surfacing of the truth.

Keeping in view the aforementioned facts and circumstances of the case, I do not intend to differ with the findings rendered by the lower Appellate Court which is based upon the appreciation of the oral and documentary evidence, much less, no substantial question of law arises for determination. Accordingly, the appeal is dismissed.

As regards the COCF bearing No.3150 of 2012, since, the main appeal has been dismissed, no cause of action survives in the petition and

accordingly, the same is dismissed. Interim injunction stands vacated.

With the aforesaid observations, the appeal and the COCP are dismissed.

22.03.2016
yogesh

**(AMIT RAWAL)
JUDGE**