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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4046-2012 (O&M)
Date of decision : 08.08.2016

Amarjit and others

... Appellants

Versus

Jai Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. Mandeep Kaushik, Advocate for
Mr. Parshant Sethi, Advocate
for the respondents.

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-11013-CII-2012

For the reasons stated the application which is duly supported
by an affidavit and the application is allowed subject to all just exceptions.

CM stands disposed of.

RSA-4046-2012

The appellants-defendants are aggrieved of the concurrent
findings of fact, whereby the suit of the respondents-plaintiffs has been
decreed and the appellants-defendants have been restrained from closing or
putting any hindrance or raising any obstruction in the use of 3 karam wide

path leading to the fields of the plaintiffs in any manner.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants-defendants submits that as per the revenue record i.e. jamabandis for the year 1972-73 (Ex.DA) and for the year 1977-78 (Ex.DB), respectively, much less, Aks Sizra (Ex.PA), there is no reflection of passage. The entry of the passage from jamabandi for the year 1982-83 (Ex.PD) onwards is unexplainable. No doubt that the appellants-defendants did not challenge the same, but Aks Sizra (Ex.PA) would be the best possible evidence in determination of existence of the passage. Though the appellants-defendants had no intention to block the passage, but the passage intended to be used and allegedly being used is from the field of the defendants. All these facts have not been noticed by both the Courts below, thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Mandeep Kaushik, Advocate for Mr. Parshant Sethi, learned counsel appearing on behalf of the respondents-plaintiffs submits that the concurrent findings of fact cannot be interfered. The Courts below had granted injunction after examining the oral and documentary evidence, thus, there is no illegality and perversity and prays for affirming the findings under challenge as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that injunction was sought in the year 2002. The passage had been shown in the jamabandi for the year 1982-83 till 1987-88, even in the khasra girdawari also. All these documents i.e. Ex.PA to Ex.PT have been brought on record. The previous jamabandis for the

year 1972-73 and 1977-78 pale into insignificance. Of course, the Aks Sizra do not show passage, but the jamabandi reflects its existence, thus, it could have been incorporated in the Aks Sizra at the earlier point of time. The appellants-defendants did not adhere to the same and still using continuously. When there was a threat, suit for injunction was filed. Once, the appellants-defendants had no intention to block or cause any hindrance or raise any obstruction in the passage, the injunction, in my view, can be considered to be innocuous.

For the foregoing reasons, I do not intend to differ with the findings rendered by the both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and the appeal is, resultantly, dismissed.

08.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

Whether Reportable

Yes/ No