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

RSA-4514-2012

Date of decision : 07.04.2016

Balbir Kumar

... Appellant

Versus

Som Nath and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Prabhakar, Advocate
for the appellant.

Mr. Manoj Kumar Sharma, 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)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking possession of the property measuring 3 marlas 2 sarsahi out of land measuring 5 marlas.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of the appellant-plaintiff submits that both the Courts below have misread and misdirected, inasmuch as that, sale deed dated 03.11.1982 vide which the appellant-plaintiff has sold the land to Mohinder Pal in respect of the land measuring 15 marlas bearing Khasra No.2191, out of 4 kanals 2 marlas having 15/82 shares. The encroachment was/is sought in respect of the khasra No.5911/2924, in this regard, report of Tehsildar dated 24.04.2008 proved

alleged encroachment was on 2 marlas 8 sarsahi instead of 3 marals 2 sarsahi. Owing to such misreading and misdirection, the judgment and decree of both the Courts below suffers from illegality and perversity and urges this Court to formulate the following substantial questions of law:

1. Whether the judgment and decree of both the Courts below suffers illegality and perversity or not?

Mr. Manoj Kumar Sharma, learned counsel appearing on behalf of the respondents-defendants submits that the report of the Tehsildar dated 24.04.2008 supported their case, wherein it has been found that the defendants, who are the vendees from Mohinder Pal, had purchased the plot, which was bounded by a boundary-wall, and no remedy was taken by Mohinder Pal, much less, by the defendants and urges this Court that there is no illegality and perversity in the judgment and decree of both the Courts below, much less, 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 there is no substance in the plea of Mr. Naresh Prabhakar as on perusal of the report of the Tehsildar, it has been found that adjoining to khasra No.5911/2924, the appellant-plaintiff carved out passage of 20 ft. In my view, when the property measuring 15 marlas was sold to Mohinder Pal, there was no demarcation. Mohinder Pal was put into possession in view of sale deed executed for a valuable consideration and thereupon erected a boundary wall and a gate, which has further passed on to the respondents-defendants. The act of filing the suit, is after-thought, particularly after carving out 20 Feet wide passage, which is not in existence, at the time, when the plot was sold and obviously, passage would be short in

respect of khasra bearing No.5911/2924 and therefore, the appellant-plaintiff cannot be permitted to seek the possession of the property, which has been sold for valuable consideration.

Keeping in view the facts and circumstances of the case, I do not intend to differ with the concurrent findings rendered by 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.

With the aforesaid observations, the appeal is dismissed.

07.04.2016
yogesh

(AMIT RAWAL)
JUDGE