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

**RSA-5409-2012 (O&M)
Date of decision : 12.02.2016**

Joginder Singh

...Appellant

Versus

Mehar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Premjit Kalia, Advocate
for the appellant.

Mr. M.S. Bhatti, Advocate
for the respondent Nos.2 to 4.

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-7477-C-2015

Prayer in this application filed under Order 22 Rules 4 read with Section 151 CPC is for impleading the legal representatives of respondent No.1-Mehar Singh who is stated to have died on 22.12.2014.

For the reasons stated in the application, the

application is allowed and the LRs of respondent No.1-Mehar Singh are permitted to be brought on record.

CM stands disposed of.

RSA-5409-2012

The appellant-plaintiff is aggrieved of the dismissal of the suit claiming permanent injunction by seeking the restraint order against the defendants from blocking or making further construction in the street which allegedly closed the eastern side of shop of plaintiff situated on land measuring 1 marla bearing Khasra No.441/2, Khewat/Khatauni No.133/282 as per jamabndi for the year 1998-99 as shown in the site plan attached (Ex.P-1).

Mr. Premjit Kalia, learned counsel appearing on behalf of the appellant submits that the core issue before the Courts below was to claim the easementary rights as per the site plan, respondents-defendants were blocking the gali/street on the eastern side which has resulted into the blockage of main door opening towards such street. Both the Courts below have dismissed the suit by blaming the appellant-plaintiff that he has not examined any witness from the Municipal Council to show that street is a private property. Had it been a private property, the suit was liable to be dismissed and if converse, of course, entitled to certain injunction. He submits that the evidence brought on record shows that it is clear cut intentional and willful obstruction had been caused, much less, the ingress and egress of the Gali, which was being used since 1990, had been blocked therefore, the Court ought to have granted

the injunction, thus, there is illegality and perversity in the order.

Mr. M.S. Bhatti, learned counsel appearing on behalf of the respondents-defendants submits that as per the site plan (Ex.P-1), it is evident that the shop on the northern side is abutting the wakf board gali on the which has been entered in the sale deed. The sale deed produced on record shows that the passage which sought to be injuncted, is a private passage and therefore, he could not even claim his right, rightly so, the Courts below have dismissed the suit, as the plaintiff had failed to prove the averments in the plaint.

I have heard the learned counsel for the parties and appraised the paper-book as well as the record, and am of the view that there is no merit in the appeal, for the reason, that on the northern side of the site plan (Ex.P1), there is a wakf board gali and the shop of the plaintiff is on the corner, there is entry from the northern side. The appellant-plaintiff is stated to have purchased the property in the year 1988 and not been able to prove the distance of the remaining land specifically the passage belonging to Municipal Council, in the absence of any evidence of the Municipal Council. The sale deed brought on record by the respondent-defendant shows that the passage is private, thus, the appellant-plaintiff cannot claim any right on the private passage.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be

determined by this Court.

Accordingly, the appeal is dismissed.

12.02.2016
yogesh

(AMIT RAWAL)
JUDGE