

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2197 of 2013 (O&M)
Date of Decision: March 30th, 2016

Faquir Chand

...Appellant

Versus

Sunder Lal & 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: Ms.Bindu Goel, Advocate,
for the appellant.

Mr.Binat Sharma, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby he was enjoined to close down the windows, ventilators and water outlets already affixed on the northern wall towards the plaintiffs and also to remove the Pusti alongside the wall within a period of one month.

Ms.Bindu Goel, learned counsel appearing on behalf of the appellant-defendant submits that originally suit was for mandatory injunction directing the defendant to close the rainy water outlets, ventilators and windows already installed in the northern wall of the house of the plaintiff. Along with the suit, an application under Order 39 Rule 1 & 2 CPC was filed and a Local Commissioner was appointed, who inspected the site and submitted his report, much less prepared the site plan Ex.P5.

Accordingly, the appellant-defendant closed the water outlets situated at

western side. During the pendency of the suit, an application for amendment of the plaint was moved and the same very relief towards the southern side was sought. Both the Courts below have failed to read site plan Ex.P5, much less referred the same while adjudicating the lis and formed an opinion as if the alleged water outlets cause nuisance to the respondent-plaintiffs and passed the interim order, though it was a categorical case of the defendant that the respondent-plaintiffs had miserably failed to prove the alleged nuisance as there is a vacant land between the houses of both the parties, which does not belong to the plaintiffs and urges this Court to formulate the following substantial questions of law as culled out in the memorandum of appeal:-

- “1) Whether there is ignorance of oral as well as documentary evidence on record and whether ignorance of evidence is substantial question of law?
- 2) Whether the approach of the Ld.Courts below is perverse and whether the perversity of approach is substantial question of law?
- 3) Whether the courts below have misread the evidence on record and whether the misreading of evidence is substantial question of law?

Mr.Binat Sharma, learned counsel appearing on behalf of the respondent-plaintiffs submits that the concurrent findings cannot be interfered with as no substantial question of law arises. The findings are based upon the appreciation of oral and documentary evidence, much less the defendant unequivocally admitted the factum of disposal of rainy water in the courtyard of the plaintiffs and rightly so, the Courts below have issued injunction order. There is no dispute with regard to the construction of kitchen and bath room on the northern side. There is no illegality and perversity and urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, the records of the Courts below and of the view that there is force in the contention of the learned counsel for the appellant-defendant for the reason that both the Courts below have not referred to the site plan Ex.P5 prepared by the Local Commissioner appointed at the instance of the respondent-plaintiffs. On going through the site plan Ex.P5, it is evident that there is vacant land between the houses of the appellant-defendant and the respondent-plaintiffs. They cannot allege any nuisance as set out in the plaint. Even otherwise, the Local Commissioner alleged kitchen and bath room on the western side and not on the northern side. There are ventilators, windows and outlets towards the southern side. In my view, the Courts below have not appreciated these facts and, thus, perversely decreed the suit. It is a matter of record that no objections were filed to the report of the Local Commissioner. The site plan is not that of the appellant-defendant and the same has come on record at the instance of the respondent-plaintiffs. It is settled law that misreading and non-mentioning of the documentary evidence itself is a perversity and raising the substantial question.

Keeping in view the aforementioned facts and circumstances, I am of the view that the judgments and decrees of both the Courts below having failed to advert to the aforementioned documentary evidence, suffer from illegality and perversity. Accordingly, the same are set-aside. The questions of law are answered in favour of the appellant-defendant and against the respondent-plaintiffs. The suit is dismissed and the appeal stands allowed.

March 30th, 2016
ramesh

(AMIT RAWAL)
JUDGE