

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 243 of 2016 (O&M)
Date of Decision : 02.08.2016

Manjit Kaur

....Appellant

Versus

Hans Raj and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.S. Lakhanpal, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal against concurrent judgments passed by Courts below whereby defendants-appellant were directed to remove the wooden door from point XY fixed in the street in dispute, as fully described in the headnote of plaint. They were also restrained from raising any type of construction in the 11 ft. wide street in dispute and from obstructing plaintiff from opening the door, windows or ventilators in the street and also from using it for ingress and egress from their plot.

2. The existence of street is not disputed. Learned counsel for the appellant has argued that this street was given to the appellant by owner of their plot Harjit Singh for exclusive use as private street. In the sale deed (Ex. DA), executed by Harjit Singh, from whom even plaintiff has purchased the property adjoining the street in dispute, clearly laid down that this street will exclusively vests in appellant-Manjit Kaur and no one else will have any concern with the same.

3. The sale deed was executed in favour of Manjit Kaur on 10.10.2011. Prior to that Harjit Singh had sold a plot of 6 *marlas*, adjoining the street in dispute to plaintiff-Hans Raj vide sale deed dated 10.06.2011.

While describing boundaries of that plot, the 11 ft. wide street in dispute was

shown on southern side of that plot. On the basis of this evidence, learned Ist Appellate Court has observed in para 12 of the judgment as follows:-

“12It is pertinent to mention here that vendor of both the parties is the same person. If vendor Harjit Singh intended to give street exclusively for the use of the appellant, then he must have charged extra for the said portion but there is nothing on the file that he has sold the passage to the applicant. A perusal of the sale dated 10.06.2011 vide which respondent no. 1 purchased the plot, shows that on the southern side of his plot, street of 11 feet wide has been shown to be in existence. Appellant has purchased her plot after about four months of the purchase of the plot by the plaintiff. Therefore, Harjit Singh, vendor of Manjit Kaur, could not have left the street in question for the exclusive use of the appellant.....”

4. Learned Civil Judge (Senior Division), Gurdaspur has also observed in view of the evidence on record that plaintiff had purchased a plot with knowledge and information that there was street on southern side of the plot, which he could use and in his sale deed there was no mention that this street was not meant to be used by plaintiff at all.

5. Learned counsel for the appellant submits that defendants will remove the gate fixed at point XY but plaintiff cannot keep door, window or ventilator of their house(s) towards this street as it will effect privacy of the appellant because the street leads to the house of appellant only. On perusal of site plan on file, I find no merit in this contention of learned counsel for

the appellant. The street in dispute is a public passage, which can be used by appellant but she cannot restrain the other occupants of properties on this street from using the same by keeping any opening, window or ventilator towards this street.

6. Both the Courts have rightly observed that the street in dispute does not vest exclusively in the defendant-appellant, as such, she has no right to restrain its user by plaintiff.

7. On perusal of judgments of both the Courts below and lower Court record, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

August 02, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No