

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3458 of 2016 (O&M)

Date of Decision : 22.07.2016

Rahul Chopra and another

....Appellants

Versus

Manjit Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Surinder Gupta, J.

Appellants filed suit seeking the relief of permanent injunction to restrain the defendant-respondent from interfering in their peaceful possession and demolishing any part of the triangular shop, which forms part of property No. E-239/2 situated at Phagwara Gate, Jalandhar City.

2. In later part of the judgment parties will be referred as 'plaintiffs' and 'defendant' as per civil suit.

3. Plaintiffs-appellants were earlier tenant in the shop and later on purchased the suit property comprising of one room on ground floor and one on the first floor. It is alleged that room on the first floor was approachable only through staircase situated towards north side and was part and parcel of the property purchased by plaintiffs. It was also so mentioned in sale deed dated 04.09.2006. Plaintiffs had been using the staircase for going to first floor of the shop. The defendant-respondent proclaimed to have purchased the staircase alongwith other part of the property bearing No. EK-239/2, Phagwara Gate, Jalandhar and threatened

to demolish the staircase forcibly.

4. The defendant denied claim of plaintiffs and their possession over suit property. It was alleged that staircase is 7/8 feet away from the main road and there are only 5/6 steps, which are hanging in air. The first three steps as well as upper steps are not in existence, which were demolished by previous owner.

5. On appraisal of evidence on record, learned Civil Judge (Junior Division), Jalandhar held that plaintiffs were never in possession of staircase. About the plea of plaintiffs that staircase is part of their shop as per sale deed dated 04.09.2006, learned Civil Judge (Junior Division), observed in para 20, as follows:-

“20. Perusal of sale deed, Ex. P-2, on the basis of which plaintiffs are claiming their ownership and possession over the suit property and over the staircases also clearly show that plaintiffs purchased an area of 69 sq. ft. with a front of 11'x8” with proper boundaries mentioned therein and as such, the existence of any staircases was neither mentioned in the sale deed as a part of suit shop, nor shown as an ancillary property with rights to the plaintiffs for using the same. On the other hand, defendant is claiming his ownership and possession over the staircases on the basis of sale deed, Ex. DA, in his favour, a perusal of which clearly reveal that defendant purchased a portion of property No. 239/2, measuring 35 sq. ft. including the roof with

specific mention in the sale deed, that from this portion the staircases have been constructed. Thus as per the sale deed, Ex. DA, the portion purchased by the defendant was inclusive of staircases, which are in dispute in the present suit.”

6. Suit of plaintiffs was dismissed against which they filed appeal, which was also dismissed. Not satisfied, plaintiffs have filed instant second appeal against concurrent findings of Courts below.

7. I have heard learned counsel for appellants and perused the paper-book with his assistance.

8. Sale deed dated 04.09.2006, copy of which was available with learned counsel for appellants was perused, which shows that front portion of triangular shop was 11'x8". Front of the shop, in possession of plaintiffs, on excluding staircase, as per report of local commissioner is 11'x10". This clearly depicts that staircase is not part of property purchased by plaintiffs. Secondly, in the sale deed there is no recital that plaintiffs were also sold staircase or were given any right to use the staircase. This clearly shows that staircase is not part of the property i.e. triangular shop purchased by plaintiffs.

9. It is nowhere the case of appellants that total area of shop mentioned in the sale deed will get reduced in the event of staircase being taken out. Perusal of photographs placed on file also shows that staircase is separate from the shop of appellants. Appellants cannot claim any right beyond recital in the sale deed, which nowhere says that they had been sold the staircase or any right to use the staircase in dispute.

10. Learned counsel for appellants could not make out that findings of Courts below are based on misreading or wrong appreciation of evidence on record calling for any interference in this appeal. No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

July 22, 2016
jk

(SURINDER GUPTA)
JUDGE