

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

RSA No.498 of 2016 (O&M)

Date of decision : 12.08.2016

Jaswant

...Appellant

Versus

Shri Pal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Arun Kumar Singal, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the part of the judgment and decree rendered by the lower Appellate Court, whereby he has been restrained from raising any projection on the public passage.

Mr. Arun Kumar Singal, learned counsel appearing on behalf of appellant-defendant submits that respondents-plaintiffs in the suit claiming permanent injunction has sought following two reliefs:-

1. The street was private and, therefore, no body can be permitted to use the same.
2. With regard to the aforementioned restraint order.

The trial Court dismissed the suit in toto but the lower

Appellate Court though in appeal preferred by the plaintiffs declined the relief vis-a-vis private passage but restrained the defendant in the manner indicated above. He submits that once plaintiff had not been pleaded or proved the case vis-a-vis violation of his easementary right, injunction aforementioned could not have been passed, thus, there is illegality and perversity.

I have heard learned counsel for the appellant-defendant and appraised the paper book.

The operative part of the injunction as granted by the ADJ reads thus:-

“13. Now question for determination as to whether plaintiffs are entitled to decree of injunction as prayed for. Plaintiffs have prayed for a decree for injunction restraining the defendant from extending the projection of his house in the passage in dispute. According to the plaintiffs width of the passage in dispute is about 6 feet only and this fact has not been disputed by the defendant. The local commissioner has also mentioned in his report Ex.P2 and site plan Ex.P3 that width of the passage in dispute is 6 feet only. According to site plan prepared by local commissioner and the site plan filed by the plaintiff, house of the defendant is towards southern side of the passage. There is plot of some other persons on the northern side of the passage in dispute. Defendant has stated in his written statement that he wants to extend projection of his house up to 2 ½ feet approximately. If the defendant and owner of the plot towards northern side of the passage are allowed to extend the projection in passage in question, then almost entire passage will be covered and it will certainly stop air and light to the house

of the plaintiffs which are situated at the back of the passage in dispute. The passage in dispute may be a public passage, but defendant has no right to raise construction of his projection in the passage which would cause prejudice to the other occupants of the houses in passage. Therefore, it is concluded that plaintiffs are entitled to decree of injunction as prayed for. Therefore, finding of the trial Court on issue No.2 is reversed and this issue is decided in favour of plaintiffs.

14. In view of my above discussion, appeal is allowed with costs. Impugned judgment and decree dated 29.09.2014 passed by the trial Court are set aside. Suit of the plaintiffs is decreed with costs. Defendant is restrained from constructing any projection in the passage in dispute. Decree sheet be prepared accordingly. Trial Court record along with copy of this judgment be sent to the trial Court and appeal file be consigned to the record room after due compliance.”

I am of the view that once there is findings that aforementioned passage was public, none of the persons who are residing in that area can be permitted to shorten the width of the street by raising the projection or causing hindrances. The extension of projection would definitely cause hindrances in the passage which is 6 feet in width, thus, aforementioned injunction applies to all the residents of the area. In my view aforementioned order is most innocuous and has been passed by striking out of the equities.

For the reasons aforementioned, no ground for interference is made out, much less, no substantial questions of law arises for determination.

Accordingly, present Regular Second Appeal is dismissed.

12.08.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes/No