

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

RSA No.4193 of 2015 (O&M)

Date of decision:12.07.2016

Mange Ram and another

... Appellants

Vs.

Rajesh 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. Surinder Gandhi, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.10147-C-2015

For the reasons stated in the application, duly supported by an affidavit, delay of 21 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.4193 of 2015 (O&M)

Appellant-defendants are aggrieved of the judgment and decree dated 9.4.2014, whereby the suit of the plaintiffs has been decreed and the judgment and decree dated 21.3.2015, whereby the appeal filed by the appellants has been allowed and the judgment and decree of the trial Court has been modified.

Mr. Surinder Gandhi, learned counsel appearing on behalf of the appellant-defendants submits that injunction was sought with respect to entire usage, whereas, the Lower Appellate Court has modified the order. In fact, the respondent-plaintiffs were not entitled to injunction with regard to shaft area shown with letters 'ABEF' and thus, submits that there is illegality and perversity in the findings rendered by the Lower Appellate Court and there is misreading of the oral and documentary evidence, much less, of the site plan. He further submits that plaintiffs have miserably failed to prove the case as the area in dispute was being used by the appellant-defendants since time immemorial and thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant-defendants and appraised the judgments and decrees of the Courts below and of the view that there is no merit and force in the submissions of Mr. Gandhi as the Lower Appellate Court, being the last Court of facts and law, after examining the entire evidence, much less, report of the Local Commissioner came to the following findings which read thus:-

“6. Perusal of record shows that both the parties have gone placing their duly sanctioned site plans as approved by Municipal Committee, Jhajjar. The site plan of the respondents/plaintiffs is Exh.P4 whereas that of appellants/defendants is Exh.P5. Both the site plans are duly referring the shaft/zhiri. Only difference is that while plaintiffs are showing it as 'Shiri Shahlan' while defendants are calling it

as 'Zhiri Mustarka'. This difference of words goes a long way in clearing all the doubts as by appending word 'Mustarka' defendants are admitting the right of usage of the plaintiffs as well whereas plaintiffs by adopting word "Shahlan" are showing their exclusive right of usage. Thus, plaintiffs are on a better footing. The only weakness of their case is that they are totally silent about the wall falling on the other side of said shaft/zhiri. In other words, they are not asserting that the wall on both sides of the shaft is raised by them in their own land. Since the wall is there on both the sides of the shaft, then it has to be admitted that it is the boundary wall of the defendants/appellants which is abutting the shaft on one side and the boundary wall of the house of the plaintiffs/respondents is falling on the other side of the shaft. The boundary wall of the house of appellants/defendants is having no window, door, ventilation or parnala/mori opening towards the shaft, but said boundary wall is not from one end to other end as in the extreme end area of the shaft, appellants/defendants are having their 3'x9' Tank space, duly shown by points EC in rough site plan (Exh.P6). Local Commissioner has also visited the spot on 18.09.2009 on the direction of the court and has gone showing the boundary wall of appellants/defendants in the site plan on the southern side with marks EF and has then left the remaining area of the shaft

running without any boundary wall towards the plot of appellants/defendants by showing it with marks ED. The parallel area of ED on the opposite side, i.e., towards Northern side where the plot of respondents/plaintiffs falls, is shown with marks BC and new construction of the appellants/defendants is shown there of the height of about one feet in the words '3 Paale Nai Tamir' which means three rows of the bricks over the ground level/DPC level. Same type of construction has been shown by the Local Commissioner in the Eastern side with marks CD.

7. *From the above discussion, this Court has come to the conclusion that respondent/plaintiffs are exclusively using the shaft area up till the point where appellants/defendants have started their new construction. If this division is shown with the marks adopted by the Local Commissioner for the zhiri/shaft area, then it is the area shown with marks ABEF which is being exclusively used by the respondents and the remaining area shown with marks BCDE is under exclusive utilization of the appellants. The view gets strengthened from the clarity given by the Local Commissioner in his site plan wherein he has shown various windows, pipes, ventilation points and drainage pipers throughout the boundary wall of the respondents within the area falling between points ABEF, but he is having no such usage within the area falling between points BCDE whereas*

boundary wall of the house of respondents is touching the Northern side of the area shown with points BCDE.

8. *The nutshell result of entire discussion is that the shaft area has two divisions, one shown with marks ABEF being exclusively used by the respondents and the other shown with marks BCDE being exclusively used by the appellants, as per the points shown by the Local Commissioner in its rough site plan. Since Local Commissioner has prepared the site plan with a pencil, hence, to exclude all type of apprehension of these marks being altered, this Court found it appropriate to highlight marks ABCDEF with red ink pen by putting identical marks with the pen just adjacent to these marks given with pencil in the site plan. Red ink pen marks are accordingly inserted.*

9. *In view of above discussion, appellants are liable to be permitted to use the shaft area shown with mark BCDE in the site plan of the Local Commissioner to his exclusive usage within which respondents will not create any hindrance, but appellants are having no authority to put under usage the remaining area of the shaft shown with marks ABEF as said area is for the exclusive use of the respondents. Impugned judgment and decree passed by learned trial court is liable to be modified to the above extent. Ordered accordingly. Appeal stood partly allowed in above terms. No order as to costs.*

Decree sheet be drawn. Trial Court record be sent back alongwith copy of this judgment. File be consigned to record room after due compliance.”

I am of the view that findings rendered by the Lower Appellate Court are based upon the appreciation of oral and documentary evidence and the appellants have rightly been restrained to use the shaft area shown with marks 'ABEF' as the said area is exclusively used by the respondent-plaintiffs but has been granted the permission to use the shaft area shown with marks 'BCDE' in the site plan of the Local Commissioner report dated 18.09.2009. It is apparent that grievance agitated before the Lower Appellate Court has been redressed. No interference is warranted in the impugned judgment and decree passed by the Lower Appellate Court, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 12, 2016
savita