

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

RSA No.5524 of 2015 (O&M)

Date of decision : 01.02.2016

Ram Phal

.....Appellant

Versus

Naresh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Anuj Balian, Advocate for appellant.

DARSHAN SINGH, J.

The present regular second appeal has been directed against the judgment and decree dated 13.08.2015, passed by the learned District Judge, Kaithal vide which the regular first appeal filed against the judgment and decree dated 03.11.2012 passed by learned Civil Judge (Junior Division), Kaithal has been dismissed.

2. As per the case of the plaintiffs-respondents, they are owner in possession of the house shown in green colour in the site plan attached with the plaint situated within the *abadi deh* of village Garhi-

Padla. There is a street, which leads from main street to their house. The appellant-defendant is constructing the house shown in yellow colour in the site plan on the northern side of the said street. He had constructed a projection to the newly constructed house in the street shown in the red colour in the site plan, which is causing inconvenience to them as well as others for egress and ingress. The loaded vehicles such as tractor-trolley etc. cannot pass. Hence, the suit.

3. The appellant-defendant contested the suit on the grounds *inter alia* that the street in dispute was divided into two parts of 5 feet, each, which was used by him as well as the plaintiffs as a result of the compromise arrived at between the parties. It was also settled that dividing wall will be demolished and street in dispute shall be used by them. It is further pleaded that street in dispute was built up by the Gram Panchayat. The ground floor of his house is already complete and there is no encroachment made by him in the street in question. He is constructing his house in the northern side. On the southern side also, there is construction of his house. He is constructing the house on the land purchased by him from Gopi Ram and Ram Sarup. He has already constructed the projections on the roof of the house and the height of the same is near about 16 feet. Since the construction is already complete, so no injunction can be granted. With these pleas the appellant-defendant pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial court vide order dated 27.01.2011 :-

1. Whether the construction/projection of the defendant

towards the street amounts to encroachment on the street? OPP

2. Whether the plaintiffs are entitled to the decree for mandatory injunction directing the defendant to remove the construction/projection towards the street? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form under the provisions of law? OPD
4. Whether the plaintiffs have no *locus standi* to file the present suit? OPD
5. Relief.

5. The learned trial court returned the findings on all the issues in favour of the plaintiffs and ultimately the suit of the plaintiffs was decreed vide impugned judgment and decree dated 03.11.2012.

6. Aggrieved with the aforesaid judgment and decree, the defendant preferred the appeal, which was also dismissed by the learned District Judge, Kaithal vide impugned judgment and decree dated 13.08.2015. Hence, this regular second appeal.

7. I have heard Mr. Anuj Balian, Advocate, learned counsel for the appellant-defendant and have carefully gone through the paper-book.

8. Initiating the arguments, learned counsel for the appellant contended that even the suit filed by the plaintiffs-respondents was not maintainable as they had not pleaded and proved any actual or substantial damage to them. They have not adduced any evidence to show as to what hindrance has been caused by the appellant in the street. He further contended that no other inhabitant of the locality has raised any grouse that any obstruction has been caused by the appellant in the street. He

further contended that it is alleged that the street was made pucca by the Gram Panchayat but the Gram Panchayat had not been made a party to the suit. He further contended that the plaintiffs-respondents cannot claim the easementary rights. Thus, he pleaded that the impugned judgments and decrees are not sustainable.

9. I have duly considered the aforesaid contentions.

10. This regular second appeal has been preferred against the concurrent findings of fact recorded by learned courts below. It is settled principle of law that the scope of interference in the regular second appeal is very limited. The High Court in the regular second appeal can only interfere if the learned courts below have misinterpreted or misdirected the evidence, the approach of the courts is perverse and any substantial question of law arises for consideration.

11. It is the case of the plaintiffs-respondents that there exists a street which leads from the main street to their house and defendant-appellant has constructed the projection in the street which causes inconvenience to the plaintiffs as the street in question has been narrowed down and creates hindrance in egress and ingress of tractor trolley having fodder and also blocks the light and air of the house of the plaintiffs. It is further pleaded that this illegal and wrong act of the defendant has caused loss and injury to the property of the plaintiffs for utilization of the street.

12. The construction of projection by the appellant defendant in the disputed street is even admitted in the written statement. It has been specifically pleaded that the appellant has already constructed the

projection on the roof of the house and the height of the same is near about 16 feet. So, it is an admitted fact that the appellant-defendant has constructed the projection hanging over the street in dispute.

13. The learned first appellate court has mentioned that plaintiff No.2 Dinesh Kumar has stated that the projection raised by the defendant is at the height of 11 feet. He denied the suggestion that projection is at the height of 16 feet and the same has been constructed by him in his own land. Appellant-defendant has alleged that the height of the projection is 16 feet. Except the oral statement of DW1 Ram Phal, defendant and DW2 Gopi Chand, no cogent and convincing evidence has been adduced by the appellant-defendant to establish that the height of the projection was 16 feet as alleged by him. Once the existence of projection is admitted, it was for the defendant to show that it was not an encroachment in the public street. The projection hanging in the street is also an encroachment. The factum that the plaintiffs are using the street for their ingress and egress is not disputed. The appellant defendant has pleaded in the written statement that the Gram Panchayat has constructed the street in dispute. It shows that the street in question is a public street. Thus, any hanging projection in the public street is clearly an actionable encroachment.

14. PW1 plaintiff Dinesh Kumar has categorically deposed that the projection is causing hindrance in the use of street. The learned first appellate court has observed that the said statement of PW1 has gone un rebutted. Much dispute has been raised about the height of the projection. Learned counsel for the appellant has not been able to show

any statutory provision that beyond certain height the construction of projection in a public street is permissible. The projection hanging in the street at whatever height will amount to encroachment. Such encroachment in the public street certainly cause actual and substantial damage to the free user of said street by inhabitant of the locality. Moreover, PW1 plaintiff Dinesh Kumar has categorically stated that disputed projection is causing hindrance in the use of the street. So, it cannot be stated that the projection constructed by the appellant is not causing actual and substantial damage to the plaintiffs-respondents.

15. As the dispute is with respect to the encroachment in the public street resulting in damage to the plaintiffs-respondents, so the Gram Panchayat was not a necessary party. As the projection constructed by the appellant-defendant is illegal and has resulted in obstruction in the public street, the suit for mandatory injunction for removal thereof is perfectly maintainable.

16. Consequently, I do not find any illegality in the concurrent findings recorded by learned courts below and the same does not call for any interference by this Court.

17. Resultantly, there is no merits in the present appeal and the same is hereby dismissed in *limine* with no order as to costs.

01.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**