

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

R.S.A. No.920 of 2016 (O&M)

Date of decision: 04.05.2016

Smt. Krishna Rani

..Appellant

Versus

Gulshan Kumar and other

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Arihant Goyal, Advocate
for the appellant.

Jitendra Chauhan, J.

CM No.2526-C of 2016

After hearing the learned counsel for the appellant and in view of the circumstances narrated in the application, which is duly supported by an affidavit, delay of 18 days in refiling the appeal is condoned, subject to all just exceptions.

CM is allowed as prayed for.

Main Case

In this regular second appeal, the plaintiff-appellant has challenged the judgment and decree dated 14.07.2015 of Additional District Judge, Ferozepur (for brevity 'the First Appellate Court') dismissing the appeal filed by the appellant against the judgment and

decree dated 27.09.2011 of Additional Civil Judge (Sr. Division), Ferozepur, (for brevity 'the trial Court') dismissing the suit of the plaintiff.

The plaintiff-appellant filed suit for mandatory injunction directing the defendants No.1 and 2, Gulshan Kumar and Deepak Kumar to remove the door, wash basin and the height of the street i.e. common between the plaintiff and defendants and for relief of permanent injunction restraining them from causing any hindrance in ingress and egress of the house of the plaintiff.

The suit of the plaintiff was dismissed with costs, vide judgment and decree dated 27.09.2011 passed by the trial Court. The Ist appeal filed by the plaintiff-appellant also met with the same fate. Hence, this regular second appeal by the appellant-plaintiff.

The main contention of the learned counsel for the appellant-plaintiff is that both the Courts below have not correctly appreciated the recitals of sale-deeds, Ex.P8 and Ex.P9, which go to prove that the site in dispute is a private street, encroached upon by the defendants. The learned counsel prays for reversal of judgments and decrees of the two courts below.

I have heard the learned counsel for the appellant-plaintiff and carefully gone through the paperbook with their able assistance.

The main thrust of the contention of learned counsel for the

appellant is that the sale-deeds, Ex.P8 and Ex.P9 go to establish that prior to the purchase of their houses vide sale-deeds, Ex.P8 and Ex.P9, there existed a private street over which the defendants had no personal right or interest. The street in question has been encroached upon by the respondents. In support of his assertion, he refers to the telephone bills, electricity bills, water bills, Ex.P2 to Ex.P7, which reflects the details with regard to phone bills, electricity bill and water supply bills. However, these documents are irrelevant for the purpose of determining the status of the street. The plaintiff has not proved any documentary evidence of the Municipal authorities or the revenue record to prove that it is a private street. Mere recitals in the sale-deeds, Ex.P8 and Ex.P9 executed by Gurdial Chand in favour of the plaintiff and her husband that there is private street on the southern side of the houses, are not enough to prove it to be a private street especially when there is no corroboration to these recitals. Recitals may be wrong. Neither Gurdial Chand nor any of his successor or representative came in the witness box to depose as to who had left this private street. Admittedly, the rough site plan, Ex.P1 attached with the plaint was prepared at the instance of the plaintiff-appellant, and not according to actual measurement and existing position on the spot. The boundaries of Ex.P8 and Ex.P9 do not tally with site plan, Ex.P1. Mere laying of water pipes and sewerage pipes underneath the street does not make it a

joint private street. The plaintiff-appellant has failed to prove issue No.1 that the site in dispute is a private street. There is no illegality, perversity or infirmity in the judgments of both the Courts below. Both the Courts below after correct appreciation of evidence have concurrently held that the site in question is not a private street.

No substantial question of law arises for determination by this Court in this appeal. Thus, this appeal has no merit and is dismissed in limine.

04.05.2016

ashok

(JITENDRA CHAUHAN)
JUDGE