

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

RSA No.6004 of 2015 (O&M)

Date of decision:23.08.2016

Parshotam Lal and another

... Appellants

Vs.

Chander Kanta Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sarju Puri, Advocate, for
Mr. Dinesh Nagar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

Appellant-plaintiffs are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, their suit has been dismissed.

Mr. Sarju Puri, learned counsel appearing on behalf of the appellant-plaintiffs submits that claim in the suit was for mandatory injunction seeking intervention of the Court for appropriate directions to the respondent-defendant for removal of the gate from points ABC as owing to the aforementioned erection, the width of the street has been reduced to 5-6 feet which was 14.5 feet. The site plan (Ex.P3) has been proved on record. The defendant has categorically admitted in the evidence that she had purchased the property measuring 17 marlas, vide sale deed dated

12.02.1996, but at the spot, it is 16 marlas. It is in this background of the matter, she had encroached upon the public street and therefore, the cause of action arose to file the suit. The trial Court decreed the suit but the Lower Appellate Court has committed illegality and perversity in setting aside the well reasoned judgment and decree of the trial Court as it is not in dispute that it was a public street and thus, urges this Court for setting aside the judgment and decree of the Lower Appellate Court.

I have heard learned counsel for the appellant-plaintiffs and appraised the judgments and decrees of the Courts below and of the view that it was incumbent upon the plaintiffs to prove on record the erection of the width of the street by getting the same demarcated. Merely self serving statement and production of site plan would not prove the encroachment on the public street. The site plan of the defendant has been sanctioned by the concerned Municipal Council way back in the year 1996. There is no averment in the suit when the gate was carved out. The suit had been filed in the year 2009. In my view, the plaintiffs have failed to discharge the onus to seek the relief as noticed above. The plaintiffs cannot rely upon the cross examination in bits and pieces.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court. No case for interference is made out.

Appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 23, 2016
savita

Wheather speaking/reasonedYes/No

Whether ReportableYes/No