

**CM No. 4708-C of 2016 in/and
RSA No. 6020 of 2015(O&M)**

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**CM No. 4708-C of 2016 in/and
RSA No. 6020 of 2015(O&M)
Date of decision : May 25 , 2016**

Jiwan Singh @ Jiwan Kumar

..... Appellant

Versus

Mehar Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Farid S Virk, Advocate
for the appellant.**

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

**Amit Rawal, J (oral).
CM No. 4708-C of 2016**

For the reasons stated in the application, application is allowed.

The appeal is restored back to its original number.

RSA No. 6020 of 2015(O&M)

The appellant-defendant is aggrieved of the decretal of the suit injunctioning him not to interfere in the peaceful possession of the plaintiff over the house and from opening any window in the wall marked by Letter EDC as per the site plan and further restraining them, their agents, servants etc.and from opening any patnala of the roof of his house towards the roof of the house of plaintiff, forcibly, illegally or in any other manner.

Learned counsel appearing on behalf of the appellant

submits that during the pendency of the suit, an application for seeking amendment of the plaint for incorporating the relief of mandatory injunction was moved stating therein that during the pendency of the suit window was opened but the trial court declined the application. There is no challenge to the aforementioned order yet the defendant had been enjoined.

He further submits that plaintiff has miserably failed to prove that the window was not in existence 20 years ago. Both the parties are related to each other as they are cousins. There was no arrangement of mutual consent for not opening the window, yet the courts below erroneously decreed the suit, thus urges this Court for formulating the substantial questions of law as carved out in the Memorandum of Appeal.

I have heard learned counsel for the appellant and appraised the paper book and of the view that defendant in the cross examination had admitted the correctness of the site plan Ex.P-1 and also that he did not know whether the window at point 'X' in the wall ED has been closed using wood or tin and nails, although he later improved upon and stated that the window is still open.

Be that as it may, despite the respondent-plaintiff has failed to succeed in getting the relief of mandatory injunction yet the courts below enjoined the defendant not to open the window. In essence, whatever was in existence on the date of filing of the suit has been taken into consideration.

In view of the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

**(AMIT RAWAL)
JUDGE**

**May 25 , 2016
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