

RSA No. 6265 of 2015

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 6265 of 2015

Date of decision : May 23, 2016

Parveen Kumar

..... Appellant

Versus

Pardeep Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.P.S. Duggall, 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).

The appellant-plaintiff is aggrieved of the impugned order whereby the suit for mandatory injunction in respect of land mentioned in the suit for issuing directions to the defendant to remove or demolish the construction of bathroom and toilet raised upon the first floor of common deori of house No.25/35 has been dismissed.

Learned counsel appearing on behalf of the appellant submits that earlier the suit for permanent injunction was filed and there was ad interim stay, however, the defendant allegedly purchased the ½ share by virtue of sale deed dated 24.12.2003 and raise construction thereon. The suit aforementioned was withdrawn with liberty to claim appropriate relief and under these circumstances

mandatory injunction has been sought. Both the courts below have failed to advert to the document dated 28.8.1969 wherein it has been mentioned in the family settlement that the deori will remain common between all the co-sharers and no co-sharer has any right to sell/divide the common deori and there would be no construction on the said area, thus, there was willful violation by the defendants and they have stepped into the shoes of erstwhile owner. All these facts have not been noticed by the courts below, thus, there is illegality and perversity in the judgments rendered by both the courts below.

I have heard learned counsel for the appellant and appraised the paper book and of the view that in order to prove alleged encroachment, heavy onus was upon the plaintiff. Nothing prevented the plaintiff to get the area demarcated to show that there was construction on the common deori which was beyond the area of the defendants, in essence the area which has fallen to appellant-plaintiff's share as per compromise *ibid*. Even in the sale deed there is no recital with regard to the common deori.

Having failed to discharge the onus, I am of the view that both the courts below have rightly declined to interfere and grant the relief as sought.

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 23 , 2016
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