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

**RSA-6216-2014 (O&M)
Date of decision : 24.05.2016**

Executive Officer, Municipal Council, Faridkot

... Appellant

Versus

Darshan Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Supriya Garg, Advocate
for the appellant.

Mr. N.K. Manchanda, Advocate
for respondent No.1.

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-defendant is aggrieved of the concurrent findings of fact, whereby they have been enjoined from demolishing/dismantling/removing the partition Western Wall which is 4 ½” thick and upto the roof of Varandah (approx) in height as per the site plan (Ex.PW-2/1).

Ms. Supriya Garg, learned counsel appearing on behalf of the appellant-defendant submits that respondent No.1-plaintiff was inducted as a tenant in demised premises and later on, the same was sold vide sale deed 02.01.2002. The sale deed does not envisage the measurement of the plot as

27x10 feet, but only mentioned the area as 30 square yards. Respondent No.1-plaintiff has miserably failed to prove the measurement of the plot, much less, even lead any evidence in this regard. The passing reference in the written statement could not be considered as admission of respondent No.1-plaintiff as he has failed to discharge the onus. All these facts have not been noticed by both the Courts below, thus, there is fallacy, much less, illegality and perversity and prays for formulation of the following substantial questions of law:-

1. Whether in the absence of specific measurement in the sale deed (Ex.P-C), respondent No.1-plaintiff could get the injunction with regard to the property measuring 27x10 feet?.
2. Whether there has been a misreading of oral and documentary evidence?
3. Whether the judgment and decree of the Courts below suffers from illegality and perversity?

Mr. N.K. Manchanda, learned counsel appearing on behalf of respondent No.1-plaintiff submits that the defendant while in corresponding para No.1 of the written statement gave the dimension of the property as 10 x 26 ½”, thus, there was no occasion for respondent No.1-plaintiff to lead any evidence. The witness of the Municipal Council also conceded the measurement of Shop No.6 as 10x27. After examining the examining the evidence aforementioned threadbare and in extenso, both the Courts below have injuncted the appellant-defendant from demolishing/dismantling/removing the partition Western Wall which is 4 ½” thick and upto the roof of Varandah (approx) in height as per the site plan (Ex.PW-2/1), thus, urges this Court for affirming the findings as no substantial question of law arises

for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that site plan Ex.PW-2/1 is not in consonance with the descriptions of the property given in the sale deed as on East shop No.7, West is shop No.5, North is road and South is shop of Girdari Lal. The dispute is with regard to the Mark A and P on the western side, where the injunction qua wall had been granted. The case of the appellant-Municipal Council is that the Varandah was never sold, which is not reflected in the sale deed, in essence, respondent No.1-plaintiff had sought to encroach upon the land of the Municipal Council by giving its measurement as 27x10" which is contrary to the sale deed. Even the measurement has not been given in the plaint, only mentions about the area i.e. 30 square yards, in my view, respondent No.1-plaintiff has miserably failed to discharge the onus to prove that the point at Mark A and P was part of the sale deed and therefore, Municipal Council should not interfere in his peaceful possession. As notice above, such is not the correct position. The sale deed does not mention measurement of the plot as 27x10 feet, but only described the area i.e. 30 square yards. I am of the view that both the Courts below have abdicated in not referring to the contents of the sale deed, but assumed the measurement of the shop as 27x10", thus, there is illegality and perversity, much less, fallaciousness.

For the foregoing reasons, the judgment and decree of both the Courts below are hereby set aside. Respondent No.1-plaintiff being not the owner of the property i.e. Varandah, thus, he cannot seek the injunction against the appellant-Municipal Council, by raising the construction. The

substantial questions of law as noticed above are answered in favour of the appellant-defendant and against respondent No.1-plaintiff and accordingly, the suit fails.

Resultantly, the appeal stands allowed.

24.05.2016
yogesh

(AMIT RAWAL)
JUDGE