

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

RSA No.1388 of 2010 (O&M)

Date of Order: 06.07.2017

Sheo Ram

....Petitioner

Versus

Ramji Lal and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ravindra Jain, Advocate for the appellant.

Mr. S.S. Kharab, Advocate for the respondents-
defendants.

JASWANT SINGH, J (ORAL)

Sheo Ram/plaintiff (appellant) and Ramji Lal/defendant No.1 are real brothers, whereas remaining defendants Jarnail, Rajpal, Surmukh Singh sons of Ramji Lal are nephews of the plaintiff. Towards the eastern side of the house of the defendants, there is a plot/*Bara* of the plaintiff-Sheo Ram to which he has an access from an open private passage, which falls between the Southern side of the house of the defendants and the Northern side of the house of Sunder Singh. The same passage also provides access to the house of Sardara Ram. It is conceded that Sunder Singh and Sardara Ram are also real brothers of the plaintiff-Sheo Ram and defendant No.1-Ramji Lal. Said private passage had been carved out at the time of partition, based on the family settlement.

The dispute has occurred on account of the family of Ramji Lal having opened a ventilator, window and another opening

on the first floor of their house towards the private passage. Thus, plaintiff-Sheo Ram filed a suit for mandatory injunction directing the defendants to close the said ventilator, window and opening on the first floor and also suit for permanent injunction restraining them from doing the same in future. Defendants also filed a counter claim to the effect that the passage is the joint property of all the four brothers including that of defendants.

Learned trial Court/Civil Judge (Jr. Divn.), Jagadhari vide judgment and decree dated 28.11.2007 decreed the suit of the plaintiff while dismissing the counter claim set up by the defendants. It was found that the defendants had no right in the private passage, which was carved out by the plaintiff-Sheo Ram and Sardara Ram.

The defendants filed an appeal and the same was allowed vide judgment and decree dated 24.11.2009 whereby the judgment and decree passed by the learned trial Court was set aside and the suit was dismissed.

Heard learned counsel for the parties at length and perused the record with their able assistance.

A perusal of the site plan (Ex.P1) reveals that the ventilator and opening made by the defendants on the first floor of their house fall towards private passage, which exists between the wall of the house of the defendants and the house of Sunder Singh. It further reveals that the opening, in no manner, invades the privacy of the plaintiffs as the *Bara* of plaintiff-Sheo Ram and property of Sardara Ram fall towards the back side of the house of defendants. In any case, *Bara* of the plaintiff is not being used for

any residential purposes. The findings from the examination of Ex.P.1 are fully supported by the report of the Local Commissioner appointed by the learned trial Court, which finds detailed discussion in para 22 and 23 of the judgment passed by the learned trial Court. Therefore, the findings of fact recorded by the Appellate Court while dismissing the suit of the plaintiff does not suffer from any infirmity and as such no substantial question of law is involved.

Dismissed.

July 06, 2017
manoj

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No