

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

RSA No.3473 of 2011
Date of decision : 20.07.2017

Sudershan Kumar and another

...Appellants

Versus

Subhash Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. M.K. Sood, Advocate for the appellants.

Mr. Virender Kumar, Advocate for the respondent Nos.1 to 3.

ANIL KSHETARPAL, J.

This Regular Second Appeal has been filed by the plaintiffs against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had claimed that the streets/thoroughfares carved out by the plaintiffs would continue to vest in them. The plaintiffs had carved out a colony on a piece of land and in between the various plots, left the passages for the facility of the plot holders. The plaintiffs now claimed that the aforesaid streets/land belong to them and it is their private passage. Defendants contested the suit and stated that the land is now part of urban area governed by Haryana Municipal Corporation Act, 1994 and the passages left in between the houses would be used by public at large and the same cannot be treated as private passage. It was further pleaded that the resident of Indira Complex has been using the aforesaid passages for last

many years continuously and, therefore, the plaintiffs have no right to restrain the defendants from using the aforesaid passage.

The trial Court as well as First Appellate Court on appreciation of evidence found that the passages left by any individual on a piece of land where colony has been developed would be public passages and it is being treated as such for quite sometime, therefore, the passages carved out on the land belonging to the plaintiffs would not be private passages but would be part of public street open to usage by public at large. It has further been noticed that the Municipal Corporation, Faridabad has installed mercury lights and these passages go to Indira Colony, Faridabad.

The appellants have filed the present appeal and challenged the judgment and decrees passed by the Courts below.

Counsel for the appellants has brought my attention to Ex.P1, layout plan of the colony which was carved out by the plaintiffs. He while referring to Ex.P1 has stated that in this layout plan, the passages have been shown as private passages and, therefore, the plaintiffs have every right to stop anyone except the residents of the area to use the aforesaid passages.

I have considered the submissions made by the learned counsel for the appellants and in my opinion the contention of the learned counsel for the appellants is not sustainable. Public street has been defined in Section 2(44) of the Haryana Municipal Corporation Act, 1994, which is extracted as under:-

“Section 2(44) *“public street” means any street which vests in the Corporation or which under the provisions of this Act becomes, or is declared to be a public street.”*

Chapter XIII of the Haryana Municipal Corporation Act, 1994 deals with streets. Section 216 provides that all streets within the Municipal area which are or at any time have become public streets and the pavements, stones and other materials thereof, shall vest in the Corporation. Section 216 of the Haryana Municipal Corporation Act, 1994 is extracted as under:-

“216. Vesting of public streets in Corporation – (1) All streets within the Municipal area which are or at any time have become public streets and the pavements, stones and other materials thereof, shall vest in the Corporation.

(2) All public streets vesting in the Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the bye-laws made in this behalf.”

Once it is admitted position on the record that the plaintiffs had carved out plots to setup a colony and in between the plots, passages were left out, the plaintiffs were left with no right, title or interest in the aforesaid passages. The aforesaid passages would always be public streets as defined in Section 2 Sub-Section 44 of the Act and would vest with the Municipal Corporation in accordance with Section 216 of the Haryana Municipal Corporation Act, 1994.

No other point was pressed during the arguments. Finding no merit in the present appeal, therefore, present Regular Second Appeal is ordered to be dismissed.

20.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No