

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

**RSA 762/2012(O&M)
Date of decision:31.10.2017**

Kanwarjit Singh

.....Appellant

VS

Amritsar Improvement Trust and another

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr. KBS Mann,Advocate for
Mr.JS Parmar,Advocate for the appellant.

Mr.SC Pathela,Advocate for respondent no.1-Amritsar
Improvement Trust

None for respondent no.2.

Jaswant Singh,J

Plaintiff/appellant is in second appeal against the judgments and decrees passed by the Courts below whereby his suit for permanent injunction was dismissed by learned Civil Judge (Junior Division)Amritsar vide judgment and decree dated 29.4.2009 and findings affirmed by Additional District Judge,Amritsar vide judgment and decree dated 23.7.2011.

Briefly noticed, plaintiff filed a suit for permanent injunction restraining the defendants from raising any type of illegal and unlawful construction in the vacant space between Booth no.15 and Shop-cum-Flat No.8,owned by plaintiff, blocking the ingress and outgress to the plot of plaintiff situated in Shopping Center,Development Scheme of area bounded by GT Road,Hansli Darbar Sahib,Railway Lines and Head Water Works Road,Golden

Avenue, Amritsar.

It was alleged that Shop-cum-Residence No.8 measuring 118.66 square yards was allotted to plaintiff by Amritsar Improvement Trust (hereinafter referred to as the Trust) and since there was vacant land at the back of the said plot, having no passage, so the Trust made it compulsory for the plaintiff to purchase said vacant land. Plaintiff did so, whereafter total area allotted to him by the Trust came to be 154.22 square yards. It was further alleged that plaintiff on 2.5.1986 also got sanctioned site plan for construction over the plot allotted to him from the Trust. As per sanctioned plan, the plaintiff was entitled to construct an arcade of 8.5 feet wide. The ingress and egress to the plot of the plaintiff was from the space left by the Trust in between Booth no.15 and Shop-cum-Flat No.8. However, defendant no.2 in connivance with officials of the Trust started raising construction in the passage allotted to the plaintiff and thus blocking ingress and egress to the plot of the plaintiff.

Upon notice, defendants filed separate written statements contesting the suit. In the written statement filed by defendant no.2, various preliminary objections were taken. Besides, it was alleged that Booth no.15 was initially allotted to one Balwinder Singh by the Trust. After the death of said Balwinder Singh, the plot was transferred in the name of his widow namely Paramjit Kaur who further sold the said Booth No.15 to the wife of contesting defendant no.2 who was now in possession of said booth site. It was alleged that site plan in respect of Booth no.15 had been got sanctioned from the Trust by wife of defendant no.2 who was having every right to raise construction thereon.

Plaintiff filed replication.

On the pleading of the parties issues were framed.

Plaintiff and defendant no.2 led evidence in support of their respective pleas, whereas evidence of defendant no.1-the Trust was closed by order.

Both the courts below, on the basis of evidence led by the plaintiff and defendant no.2 have recorded findings of fact that plaintiff, while appearing as PW1, in his cross examination admitted that as per site plan approved by the Trust there was an arcade of 8 feet 3 inches only in front of the shop. It was further admitted by him that with the mutual consent of plaintiff and defendants, demarcation Ex.D1/A was got effected from the Trust. As per Exhibit D1/A, spot was inspected by the officials of the Trust on 28.8.2007 in which it was mentioned that spot i.e. Booth no.15 and Shop-cum-Flat No.8 was inspected. Size of the booth, owned by the wife of defendant no.2, was 8'6" x 25'3". The said demarcation report further revealed that walls have been raised upto height of 11 feet without any lintel, whereas site at Shop-cum-Flat No.8 was vacant and the measurement of the same was 111.37 square yards. It was further admitted by the plaintiff that there was an arcade of 8'3" in front of his plot. Thus, it was noticed that officials of the Trust had visited the spot and had they found any illegal construction on plot no.15, the same would have been mentioned in the said demarcation report. It was further noticed that after demarcation, the Trust had not issued any notice to owner of booth no.15 for any illegal construction, as it did not exist at the site. Thus, it was rightly held that defendant no.2 was not raising any illegal construction in the vacant space between Booth no.15 and Shop-cum-Flat No.8 and further that there was no cogent and convincing evidence regarding the alleged illegal construction. It was further noticed that plaintiff had failed to produce any documentary evidence i.e. allotment letter or any other communication to show that the area allotted to him was 154.22 square yards as alleged by him in the plaint and thus oral assertions of the plaintiff in this regard could not be said to have been proved on record. It has also been found that plaintiff failed to prove his exclusive ownership upon arcade measuring 8'3" and in the absence of the same it could not be held that defendant no.2 was raising any construction on the land of passage giving ingress and egress to the

plaintiff. It is in the face of these findings that suit of the plaintiff has been dismissed by trial court and findings affirmed in appeal.

In view of the above, I find that no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

31.10.2017
joshi

(Jaswant Singh)
Judge