

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

**RSA No.2015 of 2017 (O&M)
Date of Decision : 17.04.2017.**

Rajinder Kumar

.....Appellant

Versus

Shakuntla Devi and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Ms.Harmanpreet Kaur, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff was dismissed by the trial Court vide judgment and decree dated 17.08.2015. For, even the appeal preferred against the said decree failed and was dismissed on 01.12.2016, the plaintiff is before this Court. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Briefly, in a suit filed by the plaintiff he prayed for a decree of a permanent injunction restraining the defendants, their attorneys and assignees from closing the door on the southern side of his house as shown in red colour in the site plan. It was maintained that house of the plaintiff bearing No.488 was bounded on the eastern side by a street, on the western side by an open space, a neighbour on the northern side and a disputed street was situated on the southern side of his house. For, the defendants

were trying to encroach upon the street on the southern side by raising construction, and close the door of the house of the plaintiff that opens in the said street, thus, the suit.

In defence, it was pleaded *inter alia* by the defendants that no such street exists on the southern side of the property of the plaintiff. In fact defendant No.1 happens to be the owners in possession of a plot measuring 40 square yards that abuts the house of the plaintiff on the southern side. In fact, the defendants had purchased the said plot of land from one Jagjit Rai for a valuable consideration. The agreement to sell executed in favour of defendant No.1 reveals that the said site was bounded on its northern side by the house of Rajinder Kumar (plaintiff). The site plan produced on record by the plaintiff was alleged to be incorrect. Further, by a propounding the area on the southern side of his house as a public street, plaintiff intended to usurp the site owned and possessed by defendant No.1.

On a due and thoughtful consideration of the matter in issue as also the evidence on record both the Courts concurrently concluded that plaintiff had miserably failed to prove his case. Although, he had examined himself as PW1 and one Suresh Kumar as PW2 but their cross-examination remained inconclusive, and the plaintiff rather choose to close his evidence. Thus, the testimonies of these two witnesses could not read in evidence. Further, to prove that the plaintiff was owner of house No.488, he had produced a copy of the sale deed Ex.P1, but the description of the boundaries in the said document does not tally with the site plan Ex.P9. In

fact, in the said sale deed no such street is depicted towards the southern side of the plaintiff's property. Needless to assert that, for, the plaintiff to succeed he was required to show that there indeed exist a public street on the southern side of his house. However, plaintiff failed to produce the requisite documents, by summoning the necessary records from the municipal corporation, to prove his claim. Learned counsel for the appellant could not point out as to how the conclusion arrived at by both the Courts was either contrary to the record or suffered from any material illegality.

That being so, no question of law, much less any substantial question of law, arises for consideration in the present regular second appeal.

The same being devoid of merit is accordingly, dismissed.

17.04.2017

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No