

138 RSA No.4026 of 2017 (O & M) and
RSA No.4027 of 2017 (O & M)

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

RSA No.4026 of 2017 (O & M)
Date of decision :24.08.2017

Naresh Kumar and another ...Appellants

Versus

Surinder Kumar ...Respondent

RSA No.4027 of 2017 (O & M)

Naresh Kumar ...Appellant

Versus

Surinder Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate
for the appellant(s).

ANIL KSHETARPAL, J.

CM No.10283-C and CM No.10286-C of 2017

Applications are allowed as prayed for.

CM No.10284-C and 10287-C of 2017

Delay in re-filing the applications is condoned.

Main Cases

By this common judgment two Regular Second Appeals No.4026 and 4027 of 2017 are being disposed of as both the appeals are arising out of separate suits between the same parties but consolidated later on.

Defendants are in Regular Second Appeal against the concurrent findings of fact in both the suits recorded by the Courts below.

Civil Suit No.75 of 2004 was filed by the plaintiff praying for

grant of mandatory injunction directing the defendants to remove their construction from the portion, which falls in the street and for permanent injunction restraining the defendants from raising any construction in the street. Plaintiff claimed that there is a 10 feet wide street which was left by original owner Shingara Singh for common enjoyment of the purchasers. Plaintiff claims that he had purchased 7 marlas plot from Shingara Singh vide registered sale deed dated 06.02.1996. Plaintiff further claimed that he has constructed the house in the year 2000. The main gate and two windows open in the street. Defendants contested the suit. It was claimed that the plaintiff is in possession of more than 8 marlas of land, although he had purchased only 7 marlas. Defendants further pleaded that they had further purchased 5 marlas plot vide sale deed dated 17.06.2002.

Civil Suit No.88 of 2004 was filed by plaintiff-Naresh Kumar-(defendant in the first suit) for directing defendant-Surinder Kumar (plaintiff in the first suit) to remove projection of the roof coming in the street. A further prayer was made to pass a restrain order against the defendant from interfering or stopping the construction of the wall belonging to the plaintiff. Both the suits were consolidated.

Learned trial court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff-Surinder Kumar. It was held that there is a 10 feet wide street and defendants have no right to make any construction on the aforesaid street. The defendants were directed to remove the construction from the portion falling in the street. Second suit filed by the plaintiff was dismissed by the trial court.

Two appeals were preferred. Both the appeals were ordered to

Learned counsel for the appellant has submitted that if judgments of the Courts are allowed to be implemented, the possession of the appellants would be on a lesser land area than purchased by them. He further submits that the judgments passed by the courts below are result of misleading and non-reading of evidence.

I have considered the submissions of learned counsel for the appellants. The existence of the street is proved from the sale deed in favour of the appellants as also the building plan submitted by the appellants, therefore, they now cannot dispute the existence of the street. The appellants cannot be permitted to encroach the part of the street on the ground that they are not in possession of the area purchased. For that purpose the appellants would be required to take appropriate action against their vendor(s). However, under this garb, the appellants cannot be permitted to usurp the land, which is for common purpose.

Learned counsel for the appellants has not been able to point out any substantive misreading of the evidence in the judgments passed by the courts below. The dispute is only with regard to existence of street, which is proved from the copy of sale deed through which appellants had purchased the property as also the building plan got sanctioned by the appellants.

In view thereof, there is no good ground to interfere with the judgments and decrees passed by the courts below.

Hence, both the appeals are dismissed.

24.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No