

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5022 of 2016 (O&M)

Date of Decision: November 16, 2018

Satish

...Appellant

Versus

Mahesh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. J.P.Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant No.1 has not been successful in defending the appeal preferred by the plaintiffs against the judgment and decree dated 28.03.2014, whereby injunction sought by the plaintiffs was declined.

Respondent-plaintiffs alleged that since the time of forefathers, they have been living in Haveli comprised in Ahata No.48, Ghar No.63 to 68 and Khasra Samwat 1931-32 and as per the site plan, area shown in blue colour with letters ABCD was being used by them along with door, window, ventilators etc. The defendants in collusion with each other wanted to close the door, window, ventilators etc. and, therefore, cause of action arose to institute the suit as the perpetual requests of threat had fallen on deaf ears.

Appellant-defendant opposed the suit by denying that the plaintiffs had any concern with the Haveli and asserted that they along with other persons were co-owners of the Haveli since 200 years old. The

description of the Rasta as per the site plan was also given. In other words, the site plan of the plaintiff was not admitted.

Plaintiffs examined as many as four witnesses, whereas the defendants examined five years.

On the preponderance of the evidence, the trial court dismissed the suit by noticing that the plaintiffs have miserably failed to prove the existence of window, drain, ventilator etc. on the southern side of the Haveli, in which plaintiff No.2 allegedly is co-sharer. Lower Appellate Court reversed the findings.

Mr. J.P.Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that the Lower Appellate Court has committed illegality and perversity by drawing a wrong inference on the evidence nor adverted to the evidence of the defendants. The report of the Local Commissioner has not been proved in the absence of the examination, thus, the existence of the ventilator, drain etc. remained unproved.

I am afraid, the aforementioned argument is not sustainable as if at all there was some dispute with regard to the report, appellant-defendant could have sought the indulgence of the trial court as per the provisions of sub-rule(2) of Rule 10 of Order 26 CPC for examination of the Local Commissioner. No contrary demarcation report has been placed on record to belie the existence of the drain and ventilators etc. Since the plaintiffs proved the existence of the same, Lower Appellate Court, in my view, rightly reversed the findings as the trial court did not advert to the aforementioned report. Finding of fact and law arrived at by the Lower Appellate Court being the last court of fact and law, in my view, do not call for any interference. No substantial question of law arises for determination.

Resultantly, the appeal is dismissed.

November 16, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No