

125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5171-2016(O&M)
Date of decision : 12.11.2018

Ram Avtar and others

.....Appellants

versus

Saroj

..... Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.S.S.Chauhan, Advocate for the appellants.

AMIT RAWAL, J. (ORAL)

Notice of motion.

Mr.Ramender Chauhan, Advocate, who is present in Court,
accepts notice on behalf of the respondent-caveator.

Main case

Appellant-defendants are in appeal against judgment and decree of the Lower Appellate Court which has set aside the judgment and decree of the trial Court whereby the suit seeking injunction from breaking open the wall CD being part and parcel of private passage shown by letters ABCD in the site plan, was dismissed.

Respondent-plaintiff claimed that she owned and possessed a house shown in yellow colour marked by letters FDHG in the site plan . There was a closed street shown in red colour by letters ABCD. The defendant had a *Gher* adjacent to the wall i.e. beyond CD and wanted to break open the same for his ingress and egress whereas he had a separate passage. The defendants contested the suit by alleging that it was not a

private street but a public street. The issue of maintainability on account of non-impleadment of proper party i.e. municipal committee was also taken. On the preponderance of the evidence, the trial Court dismissed the suit. The main thrust for dismissal was the non-impleadment of the municipal committee.

The Lower Appellate Court, noticing the report of the local commissioner, found that it was a private street and at point CD there was a wall as the area shown beyond CD was the *Gher* of the appellant-defendants and decreed the suit.

Learned counsel appearing on behalf of the appellant-defendants submitted that the Lower Appellate Court has committed illegality and perversity in allowing the appeal filed by the respondent-plaintiff as locus standi was absent. In fact, it was a public street and, therefore, impleadment of municipal committee was necessary. Sufficient evidence has been placed on record to establish the existence of a public street. There is misreading of sale deed Ex.P-2 which showed the existence of *Gali* on the eastern side of the property. The municipal committee had constructed the *Gali* with concrete and sewerage line along with the water line had also been laid.

I am afraid the aforementioned argument of learned counsel is not sustainable as the report of local commissioner-Ex.DW9/C which has gone unrebutted, proved that it was a closed passage. The site plan Ex.P1 shown during the course of hearing also reflect that at points C to D and J to H there is a wall bifurcating the houses of numerous other persons including that of the plaintiff vis-a vis the *Gher* of the present appellants. It is not the house of the appellants. In order to prevent interference and interruption in

the residential premises from animals etc. the wall is already in existence. In such circumstances the cause of action would definitely arose to the local residents to seek injunction against the private respondents even if the municipal committee is not impleaded. The contest of the suit at the instance of the appellants also reveals the threat perception. Thus, in my view the Lower Appellate Court being the last Court of fact appreciated the evidence and rightly decreed the suit. I do not find any illegality and perversity in the findings arrived at by the Lower Appellate Court so as to warrant interference by this Court.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

12.11.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No