

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

Manoj Kumar
2018-02-12 12:30
I attest to the accuracy and
integrity of this document

RSA No.1230 of 2014 (O&M)

Date of Order: 01.02.2018

Ram Parshad & Ors.

....Appellants

Versus

Municipal Corporation Faridabad & Others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Adarsh Jain, Advocate for the appellants.

Mr. Arvind Seth, Advocate for respondent No.1.

Mr. Gaurav Kathuria, Advocate for respondent No.2.

AMIT RAWAL, J (ORAL)

CM Nos.2859-60-C of 2014

Applications are allowed. Delay in filing as well as re-filing the appeal is condoned.

Main case

Plaintiffs are in appeal against the concurrent findings of fact whereby their suit for permanent injunction restraining defendant No.2 from encroaching and trespassing or raising any constructions in the form of Chabutra or in any other form over the portion of public street marked by letters AEFG as shown in red color in the site plan with consequential relief of mandatory injunction against the defendants for removal of obstruction/construction from the disputed portion in case defendant No.2 succeeds in raising any Chaubutra, has been dismissed.

Learned counsel for the appellants submitted that as per the site plan, area shown in red color i.e AEFG is rasta, which has been encroached by the respondents. It is in these background of the matter, the suit was filed. Various complaints and letters (Ex.P.2 to P.7), copy of application (Ex.P.9), sanction letter (Ex.P.10), site plan (Ex.P.11) copy of Expert report Ex.PW7/B and enlarged photographs (Ex.PW7/1 to PW7/14) had been placed on record to prove a prima facie case but the learned Appellate Court

has misdirected in not appreciating the same in correct perspective. Suit was filed by six plaintiffs i.e residents of the area. Although, the evidence of the defendant was contrary to the record however, the courts below have gravely erred in passing the judgments.

Per contra, learned counsel for the respondent submitted that the concurrent findings of facts cannot be intererred with as the plaintiff has miserably failed to prove documents brought on record, in accordance with law, thus no interference is warranted.

I have heard learned counsel for the parties and appraised the paper book.

Although the documents (Ex.P.2 to P.7 and P.9) have been brought on record but Malti (plaintiff No.6), who had submitted those documents, was not examined as a witness. Mere exhibition of the documents would not make the document admissible and it would not themselves prove the truth of the statements contained therein particularly because of the issues in suit, in view of the law laid down by Hon'ble Supreme Court in **Sait Tarajee Khimchand & Ors Vs. Yelamarti Satyam and Ors 1971 AIR SC 1865**. Plaintiffs have miserably failed to discharge their onus under Section 101 of the Evidence Act and in the absence of discharge of onus, it could not be shifted on the defendants, I am of the view that the findings recorded by both the courts below cannot be faulted with.

No ground for interference much less any substantial question of law is made out.

Dismissed.

February 01, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No