

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5678 of 2016 (O&M)

Date of Decision: December 05, 2018

Kuljeet & another

...Appellants

Versus

Devender

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rajat Garg, Advocate for
Mr. Aditya Jain, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact and law, whereby they have been restrained from installing any equipment or electronic items on their wall shown as 'EC' in Ex.P1 and 'AD' in Ex.D2 while dismissing their counter claim.

Respondent-plaintiff claimed the injunction on the premise that he was owner in possession of the immovable property/plot measuring 1 kanal 8 marlas by giving description of killa numbers to the extent of his share. The aforementioned plot is situated adjacent to the property of the defendants shown in green and blue colours in the site plan. The defendants had already opened windows and installed air conditioners on the said common wall which was creating problem to the plaintiff and despite repeated requests, the defendants did not adhere to and deliberately installed waste water pipe on the said wall. Even matter was reported to the police but did not yield any effective result and had extended threat to install the

electric items referred to above.

Defendants opposed the suit qua maintainability and cause of action. On merits, it was stated that there was 12 feet wide passage from Rasta Aam on the northern side upto the houses of the plaintiff and the defendants shown in yellow and green colours in the site plan and there was 4 feet wide street/gali. The plaintiff wanted to grab the street and under the garb of this, had filed a false and frivolous suit. Installation of the pipe was for channeling of the roof water. The air conditioners have been installed in the windows of the house belonging to the defendants. They also set up a counter claim seeking restraint against the plaintiff regarding installation of gate at point 'F' in between the houses of the plaintiff and defendants.

Mr. Rajat Garg, Advocate for Mr. Aditya Jain, learned counsel for the appellant-defendants submitted that both the courts below have committed illegality and perversity in decreeing the suit and dismissing the counter claim as plaintiff miserably failed to prove the alleged inaction on the part of the defendants. The site plan proved existence of the plot, which has gone unnoticed. Compromise Ex.P2 has not been appreciated in correct perspective as it pertained to use of the gali/passage. Cross-examination of PW-1 admitting the wall to be exclusive property of the defendants has not been looked into. Learned counsel has also submitted that during the pendency of the appeal, decree has been executed.

I am afraid that the aforementioned argument is not sustainable, for, plaintiff in support of the aforementioned assertion had brought on record Ex.P1 to Ex.P12, i.e., site plan, compromise dated 05.01.2013, photographs, application given to the SHO, jamabandi for the year 2006-07 and mutation, whereas the defendants brought on record jamabandi, site

plan, photographs, Aks shijra etc. but on examination of aforementioned documents, the photographs had clearly reflected that the water discharge pipe was though installed on the wall of defendants, but ran towards the front of houses of plaintiff and defendants. In such circumstances, the discharge of the kitchen water was not openly released between houses of the plaintiff and defendants and thereafter into a drain. The installation of the window, ventilators and the water pipe had been proved towards the house of the plaintiff and the existence of the gali/rasta as specifically pleaded in the written statement had not been proved at the spot. If at all, the defendants were aggrieved of the site plan, they could have taken the assistance of an expert for demarcation in order to belie the assertion of the plaintiff. By noticing all the documents, the courts below, in my view, have correctly issued the injunction which cannot be faulted with or can be said to be suffering from illegality or perversity. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

December 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No