

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

RSA No.5778 of 2016 (O&M)

Date of decision:23.05.2018

Ramji Dass

... Appellant

Vs.

Baljinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Satbir Rathore, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit for permanent injunction restraining defendant No.1 or his agents from interfering by installing the electric meter and water supply line etc. or obstructing the plaintiff from putting up/raising/constructing his own wall on the private passage of the plaintiff and defendant No.2 situated at village Bodal Chhauni Tehsil Dasuya, shown in red colour in the site plan within the letters ABCD in front of defendant No.1's door at point A B, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr. Satbir Rathore, learned counsel appearing on behalf of the appellant-plaintiff submits that in the previous round of litigation, i.e., in suit instituted by the defendants against the plaintiff seeking injunction from dismantling and blocking the plaintiff house, he sought interim injunction

which was dismissed by the trial Court and affirmed by the Lower Appellate Court and there was reference that street in dispute was not a public street but private one but the aforementioned judgment has not been looked by the Courts below while dismissing the suit, otherwise the findings would have been otherwise. Both the Courts below have committed illegality and perversity in dismissing the suit and thus, urges this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that the order aforementioned was only passed in the application filed under Order 39 Rules 1 and 2 CPC and that order was not finding of fact. I am prima facie of the view that it is yet to be established whether it was private passage or not. The plaintiff has also relied upon the order dated 11.06.2007 (Ex.P7) passed by the DDPO Hoshiarpur regarding the passage in question. However, the said document revealed that the passage in question was private passage and not public passage. On the other hand, defendants had placed on record copy of letter Ex.DA addressed by the Deputy Commissioner, Hoshiarpur to BDPO Dasuya, wherein, it was categorically mentioned that passage in question was a public passage. In such circumstances, remedy for the appellant-plaintiff was to seek declaration with regard to the passage and not simpliciter suit for injunction, for, letter of Deputy Commissioner was against the letter of BDPO. All these factors weighed in the mind of the Courts below while declining the relief.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 23, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No