

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

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[RSA-6968-2016 \(O&M\)](#)

[Date of decision : 18.7.2018](#)

SURINDER KAUR

... Appellant

Versus

NEETA AND ORS

.... Respondents

Coram : Hon'ble Mr.Justice Harinder Singh Sidhu

Present:- Mr.Anil Kumar Sharma, Advocate
for the appellant.

Harinder Singh Sidhu, J

This regular second appeal has been filed against the judgment of the learned lower appellate court whereby the judgment of the trial Court decreeing suit of the plaintiff has been reversed.

The plaintiff filed a suit seeking decree of permanent injunction restraining the defendants from making any type of provision for the disposal of sullage/dirty water of their houses through the house and shops constructed and possessed by the plaintiff.

The case of the plaintiff was that she along with her sister was joint owner and in possession of the house and shops constructed over area measuring seven marlas owned and possessed by the plaintiff situated in village Kara Bakra Tehsil and District Jalandhar. The defendants who had no right or interest therein had threatened to make provision for the discharge of sullage/dirty water of their houses through the house and shops of the plaintiff.

The case of the defendants was that the plaintiff was owner of only 5 kanals 8 marlas and not of 7 marlas as claimed by her. It was also

pleaded that the plaintiff had not depicted the actual position of the spot showing existence of the street, existence of the drain and existence of the waterspout (Parnala) of the house of the defendants. It was their case that the plaintiff had not intentionally depicted the house of the defendants whose rainy water passes through existing drain. She got prepared a false site plan by amalgamating the existing street by laying cement pipes and at some point the said drain is quite open, visible to naked eyes which itself proves that the same is in existence since time immemorial. The forefathers of defendants No.1 to 3 built their houses by placing their waterspout towards the street and rainy water of their roofs through the waterspout goes to the drain which passes through the street and falls in the main drain which is on the main street.

The Trial Court noted that DW-1, DW-2 and DW-3 in their cross-examination, admitted that towards three sides of house of plaintiff, there was houses of others and towards 4th side there was the street. It concluded that these statements proved that the defendants have no concern with the property of the plaintiff and the plaintiff is in possession over the suit property as co-sharer. It was also admitted that gates of houses of defendants open towards the other street. The Court held that mere existence of waterspout does not give a license to the defendants to damage the property of the plaintiff. It was open to the defendants to approach the Gram Panchayat for providing for disposal of sullage/dirty water of their houses. Further the plaintiff/defendants had not been able to prove that there was any resolution of the Gram Panchayat regarding existence of the drain. Accordingly, the suit was decreed.

Learned lower appellate court however, reversed the finding of

the Trial Court. It was noticed that as per the jamabandi for the year 2003-04, Ex.P2, the area of land compromised in khasra No.42//14/3, upon which the plaintiff has alleged that her house and shops have been constructed is 5 kanals 8 marlas whereas the plaintiff had claimed that her house and shops have been constructed upon land measuring 7 marlas. This indicated that plaintiff has constructed her house and shops upon land more than the area compromised in khasra No.42//14/3. It was also noted that the plaintiff appearing as PW-1 had admitted that water spout (Parnala) for the discharge of the rainy water of the house of Madan Lal Chawla and Inderjit Chawla (defendants) towards her house was in existence.

The Court heavily relied upon the report of the Local Commissioner. Local Commissioner had visited the spot in the presence of both the parties. Report of the Local Commissioner indicated that there was a drain at the spot which seemed to have been temporarily blocked at the house of the plaintiff. A part of the drain passed through the house of the plaintiff where a temporary bathroom has been constructed by the plaintiff right over the drain/nali which was not supported by wall from the back side. The rough site plan prepared by the Local Commissioner indicated that there was drain having width of 2/2-1/2 ft. on the back side of the house of the parties but the mouth of the same had been blocked by a plastic bag. The report also indicated that there was open space to the extent of only 25.5., 14.5 and 6 inches in between the houses of the parties. Neither the plaintiff nor defendants has raised any objection to the report of the Local Commissioner. The Court concluded that the report of the Local Commissioner as well as statement of the plaintiff indicated that there was some space in between the houses of the plaintiff and the defendants and the

drain had been running through the said space to drain out the rainy water of the roof of the house of defendants through the water spouts of their houses, but due to blockage of said drain, water went to the house of the plaintiff. It was also concluded that the very fact that the defendants had installed the water spout on their houses also indicated that there was a drain in existence for if there was no drain running of the spot, the water spouts of the houses of the defendants would not have been towards the house of the plaintiffs.

It was also held that the plaintiff was not entitled to equitable relief of permanent injunction as she has not come to the court with clean hands. Accordingly, the judgment and decree of the Trial Court was set aside. The suit of the plaintiff was dismissed.

Learned counsel for the plaintiff has not been able to show as to how the finding of fact recorded by the learned Lower Appellate Court are perverse or not sustainable as per the evidence on record.

No question of law arises for decision in this case.

Dismissed

18.07.2018
sd

[**Harinder Singh Sidhu**]
Judge

Whether Speaking / Reasoned
Whether Reportable

Yes/No
Yes / No