

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

RSA No.945 of 2015 (O&M)
Date of Decision: March 20, 2018

Pardeep and another ---Appellants

Versus

Sushila and others ---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Sanjeev Kodan, Advocate
for the appellants.

HARINDER SINGH SIDHU, J.

The defendant-appellants are in appeal against the concurrent findings of facts recorded by the learned Courts below, whereby, the suit of the plaintiff-respondents has been decreed.

The plaintiffs filed a suit for mandatory injunction with consequential relief of permanent injunction requiring the defendants to remove their encroachment from the thoroughfare. The plaintiffs pleaded that they were owners in possession of their respective plots which they had purchased through different registered sale deeds. They had also raised construction on their respective plots. In between the plots, there was a *rasta sare-aam* shown in yellow colour in site plan. It was pleaded by them that on 26.4.2008 defendant No.1 encroached upon a part of the *rasta* by raising boundary wall and a room. It was averred that the property in dispute is situated within the municipal limits of Jhajjar and is 30 feet wide public way which was owned by defendant No.3 - Municipal Committee Jhajjar. The plaintiffs had been using the same as a thoroughfare since the time they purchased their respective plots. It had been used by the public as

a thoroughfare since the last 50 years. It was also pleaded that the

Municipal Committee had laid a sewerage pipe under the *rasta* in question. There were also pipes for carrying water for *Gaushala* over which the construction had been raised by the defendants.

Defendants 1 and 2 on the other hand pleaded that the property was not a *rasta*. The *rasta* was towards the East of the property shown by letters ABC, bearing khasra No.1416 in the revenue record. The defendants had purchased the property by way of registered sale deed dated 24.4.2008.

Defendant No.3 Municipal Committee admitted the claim of the plaintiff that the disputed property was *rasta sare aam* and that defendants No.1 and 2 had encroached upon it by raising a boundary wall. It was also stated that the Municipal Committee had served a notice upon defendant No.1 calling upon it not to construct on the *rasta sare aam*.

The learned trial Court on the basis of evidence on record, concluded that a large piece of land had been sold by private colonizers by dividing the property into different plots. The sale deed of the plaintiffs depicted that on the eastern side of the property there existed a thoroughfare. The site plan Ex.P9 revealed that the defendants had encroached upon area ABC towards the eastern side of the plot of the plaintiffs. The original owner of the property Vijay Kumar Garg appearing as PW-1 stated that there existed a thoroughfare on the property on the eastern side which had been encroached upon by the defendants. Learned trial Court noted that the sale deed dated 21.4.2008 Ex.D3 in favour of the defendants was not accompanied by any site plan nor were the dimensions of the plot purchased by the defendants indicated in the sale deed. The sale deeds of the plaintiffs pertained to the years 1996, 1997, 1998 whereas the sale deed of the defendants was of the year 2008. Having earlier sold the property to the plaintiffs by various sale deeds with specific dimensions and boundaries

not sell the land of the *rasta* to the defendants. The learned Trial Court thereby concluded that the sale deed dated 21.4.2008 in favour of the defendants was not binding on the rights of the plaintiffs. Accordingly, the suit of the plaintiffs was decreed. The defendants were restrained from raising construction over the property in dispute which was held to be a thoroughfare. They were further directed to remove the construction from the property shown in red colour in the attached site plan as A,B,C.

Learned lower Appellate Court affirmed the findings of learned trial Court.

Concurrent findings of facts have been recorded by the learned Courts below.

Learned counsel for the appellants has not been able to show as to how the said findings are perverse or against the record.

No question of law arises for consideration.

Accordingly, there is no merit in this regular second appeal and the same is dismissed.

March 20, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No