

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

RSA No.1698 of 2018 (O&M)
Date of Decision: 21.05.2018

Anoop Kumar

---Appellant

Versus

Arya Putri Pathshala

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below, whereby, his suit has been dismissed.

The plaintiff filed a suit for permanent injunction for restraining the defendant from interfering in the peaceful use of the street measuring 130 ft. x 10 ft shown in green colour in the site plan annexed with the suit and for restraining the defendant from constructing any gate in the wall shown in red colour from Point A to Point B by breaking the wall towards the side of the street.

The case of the plaintiff was that he had purchased the property bearing No.847-B measuring 88 sq. yds from one Subhash Chander son of Bihari Lal resident of Fazilika vide registered sale deed dated 12.3.1998. Even prior to this purchase, on the northern side of the property there was a private street which was being used exclusively by the adjoining owners for their ingress and egress. The defendant which is a school has threatened to

open a gate in the wall from Point A to Point B in the site plan which is just opposite the property of the plaintiff where he is running a printing press. They intend to occupy the street and make it a part of the school. The opening of the gate and encroachment of the street would be a personal nuisance for the plaintiff and it would narrow down the street.

The case of the defendant in the written statement was that the plaintiff was wrongly claiming the street to be a private street. In fact, the street was a public street. Municipal Council, Fazilika had laid RCC flooring therein. Electricity poles and lines were also laid in the street. There exists a drain in the street which is being cleaned by sweeper of MC Fazilika. It was denied that the defendant wanted to encroach upon the street or cause interference into its use by any one. It was claimed that the plaintiff had no right to object to the opening of the gate by the school in its own wall abutting the street and fixing a door in it.

The learned trial court after discussing the evidence concluded that the plaintiff had not been able to prove that the street was a private passage. The plaintiff relied on a recital in the sale deed dated 12.8.1998 (Mark-E) of property bearing No.847-B which he had purchased from Subhash Chander where the street had been shown to be a private street. The Ld. Trial Court noted that the said property was shown to be situated at Peer Gorayan Mohalla Fazilika and not at Gali Kippanwali. The Trial Court further noted that though the plaintiff relied upon site plan Ex.P-1, another site plan Ex.PX and a photograph marked as PA where the disputed passage had been shown but no draftsman was examined to prove his contention regarding the said site plans. Even PW-2 Vijay Kumar Maini attesting

witness of sale deed did not mention about the disputed passage. Further in his cross-examination, the plaintiff appearing as PW-1 virtually admitted the case of the defendant. He admitted that there was no gate installed at the beginning of the street. He also admitted that drainage lines had been constructed on one side of the street and that water supply line, sewerage pipe, electricity poles had been installed and supply of street light had been made by the Municipal Council, Fazilika. He also admitted that the street had been paved by RCC flooring by the Municipal Council about eight years ago. He also admitted that the street was the only passage to approach the defendant's school. He could not give the exact dimensions of the length and width of his house. He also failed to explain that the street is part of Mohalla Peer Gorayan. The Learned Trial court held that in view of all this it could not be believed that the sale deed Mark E was of the same property as alleged by the plaintiff.

On the other hand, the defendant had been able to prove that the street was paved with RCC by the MC Fazilka. Defendant examined DW-1 Prem Kumar who produced the copy of the resolution book of MC Fazilika for the year 2005-06 as Ex.D1 and Ex.D2 vide which resolution No.140 was passed to grant Rs.4.60 lacs for RCC flooring for Gali Kuppanwali which was sanctioned on 16.2.2009. The Register of tender for the works Ex.D3 and Ex.D4 were also proved. Measurement book Ex.D5 and Ex.D7 were also produced. DW-3 Sanjeev Kumar Draftsman proved the site plan Ex.D8. Accordingly, the Trial court concluded that the plaintiff had failed to substantiate that the street in question was a private street for the exclusive use of the plaintiff, rather he by admitting that the street had been paved by

the Municipal Council Fazilika which had also laid sewerage and drainage pipes and electricity poles admitted that the street was a pubic street. Thus, the suit was dismissed.

The learned lower Appellate Court affirmed the findings of the learned lower Court.

Findings of fact have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

May 21, 2018

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No