

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

RSA No.1708 of 2018 (O&M)

Date of Decision: 01.08.2018

Dr. Sanjay Lal

... Appellant

Versus

Dr. Mukesh Rampal

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Gaurav Aggarwal, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

A suit instituted by Dr. Mukesh Rampal plaintiff for a decree for mandatory injunction directing the defendant, Dr. Sanjay Lal to remove the signboard from the front of the shop of the plaintiff was decreed by the trial Court in his favour vide decision dated 21.02.2015. Civil appeal preferred by the defendant has been dismissed vide judgment dated 29.08.2017 passed by the learned Additional District Judge, Gurugram.

Resultantly, defendant/appellant is in second appeal before this Court.

Brief facts may be noticed at the outset.

Plaintiff (respondent herein) filed a suit on the pleadings that he is a skin specialist and had retired from the post of Senior Medical Officer in January, 2014. Upon superannuation and with the objective to start his own clinic, he purchased shop bearing No.101 admeasuring 231 sq. ft. on the first floor of

building bearing No.284, Ward No.1, situated at Gurudwara Road, Civil Lines, Gurugram vide registered sale deed bearing Vasika No.11104 dated 24.08.2006. Defendant Sanjay Lal (appellant) herein had opened a dental clinic in the shop which is exactly below the shop of the plaintiff and very recently installed a huge signboard on a railing in front of the shop of the plaintiff and on account of which the entire front portion of the shop of the plaintiff was covered and obstructed.

As noticed hereinabove suit of the plaintiff for relief of mandatory injunction was decreed in his favour and findings stand affirmed by the Lower Appellate Court.

Learned counsel representing the defendant/appellant has argued that the Courts below have not considered in the correct perspectives the contents of the sale deed Ex.P-2 in favour of the plaintiff/respondent inasmuch as in the recitals contained therein, the plaintiff/respondent had not been vested with any right to put up his display/hoarding/advertisement etc. on a railing outside the boundary or outer limit of the shop that he had purchased. Further argued that it is the owner of the complex/building who would have exclusive rights over the common portion/areas of the building and under such circumstances, the suit itself was not maintainable as owner of the complex had not been arrayed as party defendant for proper and effective adjudication of the controversy.

Having heard counsel for the appellant at length, I am of the considered view that there is no merit in the instant appeal and

the same deserves to be dismissed.

It is a case where the plaintiff/respondent had adduced on record the sale deed Ex.P-1 with regard to the shop in question on the first floor of the building. The defendant/appellant having stepped into the witness box as DW-1 fairly admitted the ownership of the shop on the first floor of the building in favour of the plaintiff.

Even though a stand was sought to be taken that the offending signboard/hoarding had been erected and was existing at the time when the shop on the first floor had been purchased by the plaintiff yet the defendant/appellant had failed to bring on record the sale deed by virtue of which his father had purchased the shop on the ground floor. Such sale deed would have been determinative as regards any rights if at all in favour of the defendant/appellant as regards usage of the common portion of the building and as to whether any right had been conferred upon the defendant to affix the hoarding/signboard on a railing in front of a shop on the first floor. Plaintiff/respondent had placed on record photographs Exhibits P-3 to P-7 which clearly reflected that the signboard/hoarding of the defendant/appellant is covering the entire railing on the first floor and right in front of the shop of the plaintiff/respondent.

The argument raised by counsel as regards the plaintiff/respondent having no right over a railing outside the boundary and outer limits of his shop would apply equally to the defendant/appellant as well. Concededly, shop of the

defendant/appellant is on the ground floor of the building/complex. Plaintiff/respondent is the title holder and owner of the shop on the first floor and immediately on top of the shop of the defendant/appellant.

This Court does not find any infirmity in the view taken by the Courts below with regard to directions having been issued for removal of the offending hoarding that had been put up by the defendant/appellant herein on a railing on the first floor of the building/complex and which happened to be in front of the shop of the plaintiff/respondent.

No merit.

Appeal dismissed.

01.08.2018

vandana

(TEJINDER SINGH DHINDSA)

JUDGE

Whether speaking/reasoned

Whether Reportable

Yes

No