

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

RSA No.3594 of 2017 (O&M)

Date of Decision: 29.08.2018

Sahib Singh

.....Appellant

Versus

Gurmeet Kaur & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. A.K. Khunger, Advocate for the appellant.

TEJINDER SINGH DHINDSA J.

Plaintiff Gurmeet Kaur, filed a suit for permanent injunction to restrain the defendants from illegal and forcibly demolishing or causing any damage to a wall shown in red colour from point B to C as reflected in the site plan attached with the plaint. Suit of the plaintiff was decreed by the Trial Court on 16.11.2016. A civil appeal preferred by Sahib Singh-defendant has been dismissed vide judgment dated 10.03.2017 passed by the Additional District Judge, Sri Muktsar Sahib.

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

Counsel for the appellant has been heard at length.

Briefly, it may be noticed that the suit had been filed by the plaintiff-respondent asserting that she had purchased a plot of 1 kanal 8 marlas out of total land measuring 8 kanals 15 marlas comprised in a particular khewat vide registered sale-deed dated 22.08.2014. Pertaining to such plot, defendant No.3 had entered into an agreement with defendant No.2 prior in point of time and on the strength of such agreement the sale-

deed had been registered in the name of the plaintiff directly from defendant no.2.

It was claimed that there was a 20 feet wide street in front of the plot and which was closed at points B and C. Defendant No.3 had executed a self-declaration as regards points B and C being the dead end of the street and that it would remain closed as such. Suit was filed on the assertion that the defendants are bent upon forcibly opening the street by demolishing the wall at points B and C.

Suit was contested by the defendants taking a stand that the disputed street is a public street. Residents of the area are using the street for ingress and egress to their houses and plots and accordingly prayer for dismissal of the suit was made.

As has been noticed hereinabove, suit was decreed and even the civil appeal has been dismissed.

The sole contention raised by counsel for the appellant is that the self-declaration dated 22.08.2014 upon which the plaintiff-respondent had relied upon, was not only a forged and fabricated document but the same would have no legal sanctity.

In the considered view of this Court, there is no merit in the instant appeal. It may be noticed that the Trial Court had appointed a Local Commissioner to ascertain the factual position on the spot. Local Commissioner had duly appeared in witness-box as PW1 and had proved his report as Exhibit P-9. As per report of the Local Commissioner, there was a wall at mark Point B to C which was 4 feet high. The Lower Appellate Court has recorded the admission of the present appellant Sahib Singh with regard to existence of the wall. Such admission was in his cross-examination and to the following effect:-

“It is correct that on the back wall of my room shown in site plan Ex.P1 a separate wall has been constructed by colony residents which is visible in photographs Ex.P4 to Ex.P8. It is correct that in site plan Ex.P10 wall has been constructed at site shown at mark BC and we are passing over the same. Volunteered, the wall was constructed in order to stop earth/sand.”

Even counsel for the appellant during the course of hearing has conceded that a wall from point B to C actually exists. The Lower Appellate Court has dismissed the civil appeal filed by the appellant herein by observing that since the wall has been constructed to a particular height for stopping earth/sand, the appellant would have no right to demolish the same forcibly. Furthermore, liberty has been granted to the appellant that if he can assert any right/title or interest in the street in question and wants to use points B to C for ingress and egress then the same can be got removed by taking recourse as per law.

No interference in the matter as such warranted.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

29.08.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No