

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4097 of 2017 (O&M)

Date of Decision: November 22, 2018

Avtar Singh Bhatti & another

...Appellants

Versus

Kulwant Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Abhinav Gupta, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants have not been successful in defending the suit, whereby they have been restrained from raising projections in the public street as mentioned in the head note of the plaint.

Plaintiff sought the aforementioned injunction from raising projection (Badra towards the street over the roof of the house) and if raised would reduce the width of the street. In this regard, reference was also made to the photographs and the site plan.

The defendants opposed the suit and denied the ownership of the plaintiff over the suit property. It was alleged that it was not a private street but belonged to the Gram Panchayat.

The parties were at variance.

The plaintiff, in support of his case, examined three witnesses and also brought n record documents Ex.P1 site plan, Ex.P2 jamabandi for the year 2010-11, Ex.P3 electricity bill, Ex.P4 certified copy of the sale deed, Ex.P5 jamabandi for the year 2005-06.

On the other hand, defendants examined defendant No.2 Piara Singh as DW-1 and brought on record documentary evidence Ex.D1 to Ex.D3 and photographs Ex.DW to Ex.DY.

Mr. Abhinav Gupta, learned counsel representing the appellant-defendants submitted that the site plan has not been proved in the absence of testimony of the draftsman nor the Gram Panchayat was impleaded, thus, it could not be proved whether the street was a private or otherwise. The other residents of the village did not support the site plan but also raised the objection, thus, it was a solitary evidence, which was liable to be ignored. The plaintiff had also no locus standi.

I am afraid, the aforementioned argument is not sustainable as it has come on record that the Gram Panchayat had laid sewerage pipes in the disputed street and raising of the construction would have definitely hampered or resulted into chaos. No person can be permitted to increase width of the roof by raising projection resulting into reduction of size of the existing street. This is what has been held by the courts below.

I do not subscribe to the argument of the learned counsel to form a different opinion than the one arrived at. Once the site plan and photographs of the defendants reveal the projection, examination of the draftsman pales into insignificance.

Resultantly, the appeal is dismissed.

November 22, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No

