

Sr. No. 114

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

**RSA No.4800 of 2017 (O&M)
Date of Decision: 06.09.2018**

Ashok Chhabra

... Appellant

Versus

Bhim Sain and others

... Respondents

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

Present:- Mr. Dinesh Arora, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.(ORAL)

Plaintiff, Ashok Chhabra instituted a suit for permanent injunction along with consequential relief of mandatory injunction for restraining the defendants from using or claiming any right or title over a wall described the Eastern wall of the shop of the plaintiff and reflected in red colour in the site plan appended along with the plaint.

Trial Court on 06.03.2014 partially decreed the suit and the defendants were restrained to the extent of not creating any new openings, windows, Alla's in the wall in dispute.

Civil appeal preferred by the plaintiff/appellant has been dismissed vide judgment dated 22.09.2016 passed by the learned Additional District Judge, Rohtak thereby affirming the judgment and decree passed by the trial Court.

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

The precise case projected by learned counsel representing the appellant is that the shop in question had been purchased by the appellant vide sale deed dated 11.06.1981 and the same had been duly proved on record as Ex.P-1 and which in itself would demonstrate that the wall in question was under the exclusive ownership of the appellant and the Courts below have erred in overlooking the requisite recital to such effect in the sale deed itself.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is warranted and the appeal deserves to be dismissed.

Parties to the lis are real brothers.

Apparently adjoining shop had been purchased by first wife of defendant/respondent No.1 on 02.05.1990 (Ex.P-2). Suit of the plaintiff/appellant was contested by the defendants by taking a plea that wall in question was not in exclusive ownership of the plaintiff but rather was a common wall.

It has gone uncontroverted that vide order dated 07.02.2011 passed by the trial Court a Local Commissioner had been appointed to visit the site and to furnish a report as regards the existing position at site and pertaining to the disputed wall.

Report of the Local Commissioner was duly furnished and has been discussed in detail by the trial Court and observations in regard thereto are in the following terms:

“On the perusal of report of Local Commissioner and site plan adduced by the Local

Commissioner, it has come to my notice that Local Commissioner has shown the wall in question by letters AB in the site plan and has duly mentioned that there exists three allas shown by letters XYZ, which have been made up of old bricks and mud and the construction is quite old one and same has been created long time back. Further, he has specifically mentioned the dimensions of aforementioned allas in length, breadth and depth, which are as follows: 3'x1'8"x6", 8"x7"x6" and 8"x7"x6" (approx.) respectively. Further the existence of allas has been proved from the photographs submitted by the Local Commissioner bearing Nos.3, 4, 5 &6 also, Local Commissioner has specifically mentioned in his report that three exists three iron girders, which are marked as FG, DE and GH existing in the shop of Kanta Devi wife of Bhim Sain, presently owned by the defendant No.3 and 4. It has been specifically mentioned by Local Commissioner that the said iron girders are old and rusted one and were installed quite long and same is duly proved from the photographs bearing nos.7 and 8 from the site plan adduced by the Local Commissioner. Further it is duly proved that those iron girders pertaining to the shop of the defendants Nos.3 and 4 are already affixed in the common wall in question shown by letters AB in the site plan of the Local Commissioner. Hence affixation of iron girders and existence of allas in the common wall duly proved that the disputed wall is common wall between the shop of the plaintiff and the shop of the defendant Nos.3 and 4 and the contention of the learned counsel for the plaintiff that the said wall in question is exclusively owned by the plaintiff is not tenable."

On the specific query having been put, Mr. Dinesh Arora, learned counsel representing the plaintiff concedes that no objections were filed to the report submitted by the Local Commissioner.

This Court does not find any patent infirmity or perversity in the concurrent view taken by the Courts below as regards the wall in question being not in exclusive ownership of

the plaintiff but being a common wall between the two adjoining shops owned by the parties respectively.

That apart interest of the plaintiff/appellant stands protected inasmuch as even the Appellate Court while affirming the judgment and decree of the trial Court has made the following observations:

“This Court is of the view that relief given by the learned Lower Court that defendants are restrained from creating any new opening windows, Aalas etc. in the wall in dispute is duly maintainable because for opening the same consent of the plaintiff is necessary as the wall in dispute is joint wall of the plaintiff and the defendants.”

In the totality of the circumstances, no interference in the matter is called for.

Appeal is dismissed.

06.09.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No