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

**RSA No.5999 of 2017 (O&M)
Date of Decision:10.08.2018**

Raj Rani

.....Appellant

Vs

Jasbir Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Maninder Singh Bajwa, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for mandatory injunction and permanent injunction.

[2]. Brief facts of the case are that the plaintiff filed a suit for relief of mandatory injunction directing defendants No.1 and 2 to remove the door, window, ventilator, A.C. and *thara* illegally constructed by defendant No.1 thereby encroaching upon the public street on the ground floor and also to remove the window, ventilator on the first floor constructed by defendant No.1 illegally, unauthorizedly and without sanctioning of site plan from defendant No.2. Plaintiff also sought permanent injunction

restraining defendant No.1 not to interfere in the ingress and egress of the property of plaintiff and her family members and also not to create any encumbrance or obstacle in the free use of the property by her.

[3]. Plaintiff claimed herself to be lawful owner in possession of house property in Khasra No.2760/2320/490 min., total area 101 sq. yards situated at Sultanwind Urban, Abadi East. Gobind Nagar, Tehsil and Distt. Amritsar. Plaintiff claimed that the property was purchased by her vide sale deed dated 27.01.2004 from one Khazan Singh through his attorney. In a blind street/gali the house was in existence and there was a wall adjoining to the house of the plaintiff. Reference of which was given in the sale deed. The construction was old. Plaintiff applied for getting the site plan sanctioned for raising new construction over her property. The site plan was sanctioned by defendant No.2 on 10.08.2009. After depositing the requisite amount towards development charges and other misc. charges, the needful was done by defendant No.2 in terms of certificate of sanction of building plan on 27.08.2009.

[4]. Plaintiff further alleged that she had raised new construction over the property from the foundation level and thereafter started living therein along with her family members. The Wall of the house of plaintiff was a common wall which was

joint with the adjoining owner of the building namely Bhagwan Singh. Plaintiff had paid requisite amount to the owner of the adjoining property i.e. Bhagwan Singh and Jasbir Singh after getting rough estimate from the Architect. The amount was received by son of Bhagwan Singh and also by the defendant towards their share of common/joint wall. The rough estimate was got prepared from the Architect, who was the valuer also. The rough estimate/valuation was not accepted by defendant No.1, rather he himself made an estimate of the value of common wall qua his share in his own handwriting dated 18.07.2009. Thereafter plaintiff paid the amount to defendant No.1 according to his own estimate. After making the payment, the plaintiff had raised the construction of first floor of his property according to sanctioned site plan. Main door of house of defendant No.1 has no opening in the *gali* where the house of plaintiff is situated. The main door of the house of defendant No.1 has opening towards locality of Gobind Nagar, Lane No.1, Ward No.36 and the gali of plaintiff was blind having brick wall end. The house of plaintiff is the last one. In the absence of plaintiff, defendant No.1 broke open the wall of the gali and opened door, windows, ventilators and affixed one A.C. adjoining to the house of the plaintiff in an illegal manner.

[5]. The act of defendant No.1 was claimed to be illegal and

mala fide. Defendant No.1 had made unauthorized encroachment in the public street. The house of defendant No.1 has no opening in the gali, where the house of plaintiff is situated. The act of defendant No.1 was questioned viz-a-viz. opening of door, window, ventilator toward the gali. The effort made to highlight the issue before the Councilor to the office of M.T.P. of Municipal Corporation, Amritsar on 30.08.2010 remained under consideration where it was specifically mentioned that defendant No.1 has no electricity, water and sewerage connection. A show cause notice was issued to defendant No.1 by M.T.P. of Municipal Corporation, Amritsar on 31.08.2010 to show the sanctioned building plan and document of title available with defendant No.1, failing which unauthorized opening towards street by defendant No.1 was to be closed by the Authorities at the cost of defendant No.1. The non-compliance of the defendant No.1 ultimately resulted in filing of the suit.

[6]. Defendant No.1 contested the suit. Factum of encroachment in the public street was denied, rather it was claimed that plaintiff herself has encroached upon the public street. Defendant No.1 claimed that the door, window and ventilator of defendant No.1 were in existence for the last more than 40 years. The act of the plaintiff was claimed to be an effort

to humiliate the defendant No.1 in order to grab the public street. Defendant No.1 further alleged that the plaintiff has demolished the construction already in existence on the spot and by way of raising school building in the name of Gulmohar School, intentions of the plaintiff are *mala fide*. It was denied that the plaintiff was having common wall with Bhagwan Singh and Jasbir Singh. She had never paid any amount to him and Bhagwan Singh. The alleged estimate at the instance of defendant No.1 was also claimed to be forged and fabricated.

[7]. Defendant No.1 in its stand submitted that the building constructed by defendant No.1 was an old construction. No new construction was raised by defendant No.1. Sanctioning of site plan is *sine qua non* before fresh construction and in the event of any default/voilation, action has to be taken as per law.

[8]. After filing of replication, both the parties went to trial on the following issues:-

- “1. Whether the plaintiff is entitled to mandatory injunction, as prayed for?OPP
2. Whether the plaintiff is entitled to permanent injunction, as prayed for?OPP
3. Whether suit of the plaintiff is not legally maintainable? OPD
4. Whether the plaintiff has not come to the Court with clean hands? OPD

5. *Whether the plaintiff has got no locus standi to file the present suit and is estopped by her own act and conduct to file the present suit? OPD*
6. *Whether the plaintiff has no cause of action? OPD.*
7. *Whether the suit of the plaintiff is not properly valued for the purpose of Court fee and jurisdiction? OPD*
8. *Whether the present suit is barred by time? OPD.*
9. *Whether the suit is bad for the want of service of notice U/s 396 of the Municipal Corporation Act? OPD*
10. *Whether the suit is liable to be rejected U/o 7 R11 CPC? OPD*
11. *Relief"*

[9]. Both the parties led their respective evidence in order to prove their case.

[10]. After appreciation of the evidence, the trial Court dismissed the suit vide judgment and decree dated 05.01.2016 which was upheld by the lower Appellate Court vide judgment and decree dated 13.12.2016.

[11]. I have considered the submissions made by learned counsel for the appellant.

[12]. Plaintiff has sought for mandatory injunction seeking directions to the defendants to remove the door, window, ventilator, A.C. and *thara* illegally constructed by defendant

No.1 and to remove window and ventilator on the first floor of the house constructed by defendant No.1 without getting any site plan sanctioned from defendant No.2. Additionally plaintiff also sought for permanent injunction restraining defendant No.1 from interfering in the ingress and egress of the public street and in the free use of public street by the plaintiff and her family members. Existence of the door, window, ventilator, AC and thara at the instance of defendant No.1 was an admitted fact. Plaintiff claimed that the main door of house of defendant No.1 does not fall in the gali. Earlier door, window, ventilator etc. were not in existence and in the absence of the plaintiff, defendant No.1 had done the mischief by breaking open the wall and gali. Thereafter opening the door, window, fixation of A.C and thara etc.

[13]. The period of existence of the door, window, AC and thara etc. in terms of age is the relevant consideration for appreciating whether the said features having been acknowledged by defendant No.2 or not? Defendant No.2 is an independent public entity. The existence of the door, window, ventilator, A.C. and thara at the instance of defendant No.1 were admitted by defendant No.2, however building of defendant No.1 was admitted to be quite old. Defendant No.2 through its official admitted that neither new construction was

raised by defendant No.1, nor any fresh construction is going on at the spot. The stand taken by defendant No.2 in respect of existence of the door, window, ventilator, A.C. and *thara* etc. towards the gali in question corroborated and proved the stand of defendant No.1.

[14]. For relief of mandatory injunction, the plaintiff was under legal obligation to prove the opening of door, ventilator, window, fixation of AC and *thara* etc. to be illegally done against the rules of defendant No.2. The said fact was never negated by defendant No.2 in unequivocal terms. The stand of defendant No.1 was ventilated by defendant No.2. In view of stand taken by defendant No.2 the alleged encroachment at the instance of defendant No.1 could not be appreciated by the Courts below.

[15]. The photographs Ex.P-10 to Ex.P-13 placed on record before the trial Court have no connectivity and the same was discarded by the Courts below on legal parameters. It has also been appreciated by the Courts below that even if the main door of the house of defendant No.1 falls in gali No.1, Gobind Nagar, Amritsar, still he has full right of ingress and egress from the outer door in the gali in question. Since the same is held to be in existence since long, therefore, right of defendant No.1 cannot be curtailed on any of the ground taken by the plaintiff. PW-2 has admitted the opening of doors of other houses in the gali in

question. The preponderance of evidence available on record made the Courts below to arrive at definite conclusion of existence of door, window, ventilator, fixation of A.C., *thara* etc.

[16]. The factum of encroachment could not be demonstrated by the plaintiff with reference to any cogent evidence. The relief of permanent injunction in terms of threat perception and intended interference could not be established on record. No such suggestion was given to defendant no.1 during his cross-examination by the plaintiff. The plaintiff has admitted in her cross-examination that she has not filed any criminal complaint against defendant No.1 for giving any alleged threat. The relief of permanent injunction is hit by Section 41(h) of the Specific Relief Act as there was equally efficacious remedy available to the plaintiff.

[17]. The finding recorded under issues No.1 and 2 are the result of correct appreciation of material available on record. Under issue No.3, even if the suit was held to be maintainable, still the decision of issues No.1 and 2 was held to be sufficient to dismiss the suit. Issue No.4 was decided in favour of the plaintiff as the onus of issue to prove that the plaintiff has not come to the Court with clean hands could not be discharged. Other issues were adequately decided as per the onus of the same. The finding of fact recorded under different issues

revolve around the decision of issues No.1 and 2 which formed the basis for dismissal of the suit.

[18]. Taking stock of entire material on record, the findings of fact recorded by the Courts below cannot be found to be the result of misreading of evidence or having suffered with any perversity. No question of law worth consideration is involved in the present appeal. The substantial questions of law framed in para No.13 of the grounds of appeal do not arise at all. This appeal is found to be totally devoid of merits and the same is accordingly dismissed.

August 10, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No