

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

**RSA No.1583 of 2019 (O&M)
Date of decision: 30.10.2019**

Surinder Kumar and others

.....Appellants

Versus

Charanji Lal and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Abhinav Jain, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.4209-C of 2019

For the reasons mentioned in the application, same is allowed and delay of 307 days in re-filing of the appeal is condoned.

RSA No.1583 of 2019 (O&M)

This appeal has been filed against the judgment dated 10.05.2017 passed by the Additional District Judge, Faridkot, dismissing an appeal filed by JDs-appellants (hereinafter referred to as 'JDs') against the order dated 03.12.2011 passed by the Civil Judge (Senior Division), Faridkot, whereby objections of the JDs have been dismissed.

Initially, the trial Court passed a preliminary decree of partition dated 02.09.2003 to the effect that plaintiff-respondent No.1 (decree holder) was entitled to possession of 2/3rd share of the shop in question after redemption of shop mentioned in the head note of the plaint. Decree holder was directed to deposit the mortgage amount of Rs.2000/- i.e. proportionate

of mortgage money with a period of one month. It was also ordered that Chobara on the shop came to the share of decree holder-respondent No.1 and he would make a payment of Rs.22,000/- to the defendants-appellants in lieu of costs of construction of Chobara.

JDs-appellants were in possession of the shop in dispute and a *chobara* was constructed over the said shop by them, which fell to the share of plaintiff-decree holder. Main objection of the JDs-appellants was that as per report dated 20.10.2008 submitted by the Local Commissioner, 2/3rd portion of the *chobara* has fallen to the share of plaintiff-decree holder and the remaining portion had gone to the share of JDs. In this backdrop, DH had to pay proportionate costs and not Rs.22,000/-.

Stand taken by the Decree Holder (DH) was that since 2/3rd portion of *chobara* has fallen to his share, he was required to pay the amount of Rs.22,000/- only and the report submitted by the Local Commissioner was perfectly legal and valid.

The Executing Court, after hearing the parties, dismissed the objections filed by the JDs on the ground that while filing written statement before the trial Court, they had admitted that there was a platform (*thara*) in front of the shop in dispute. Out of that platform, 03 feet is still in existence and the remaining was included in the *Bazar* by the Govt. Hence, the *thara* was not a part of the shop in dispute and that is why, the Govt. has removed the same to the extent of 03 feet and that portion has been included in the road while the remaining portion was still in existence. The trial Court did not give any finding that *thara*/platform was part of the same. Report given by the Local Commissioner to the effect that the *thara* is not part of the disputed shop, is perfectly legal and valid. With these observations,

objections filed by the JDs were dismissed with costs of Rs.5000/-, out of which, half would go to the account of Free Legal Aid Fund.

On appeal, the lower appellate Court has affirmed the order dated 03.12.2011 passed by the Executing Court-Civil Judge (Senior Division), Faridkot. While deciding the appeal, lower appellate Court has examined Section 12 (a) of the Punjab Municipal Corporation Act, 1911, which reads as under:

“Street”, shall mean any road, foot-way, square, court, alley or passage accessible, whether permanently or temporarily to the public, and whether a thoroughfare or not; and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any person as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid.

And shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, verandah or other erection, up to the boundary of any abutting property not accessible to the public.”

In this case, no objection was raised by the JDs at the time when Municipal Committee had removed/demolished the platform (*thara*). In case, the *thara* was part of the shop in dispute, the objections could have been raised by the JDs when the same was being demolished. Hence,

Section 11 CPC i.e. *res-judicata* is applicable against the JDs. Moreover, the order dated 28.08.2008, whereby Local Commissioner was appointed, was never challenged by the JDs. The Local Commissioner was appointed with the consent of the parties. As per report of the Local Commissioner, Shri Inderpal, Advocate, the shop is measuring 27 Sq. yards, excluding the *thara* and not including the *thara*. The lower appellate Court has dismissed the appeal and affirmed the findings of the executing Court keeping in view that land belonging to the Municipal Committee was included while demolishing the *thara* (platform).

After hearing learned counsel for the appellants, this Court is of the view that objections filed by the JDs have rightly been dismissed by both the Courts below keeping in view that the *thara* outside the shop was never part of the preliminary decree and half of the *thara* i.e. 03 feet, after demolition, had been included in the road by the Municipal Committee. Moreover, no objection was raised by the JDs-appellants at that time.

In view of the above, no illegality, much less perversity, has been found in the order/judgment(s) passed by the Courts below warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

30.10.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No