

RSA-349-1989 (O&M)

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

RSA-349-1989 (O&M)

Date of decision : 22.05.2019

State of Punjab and others

... Appellants

Versus

Amriti @ Amar Wanti and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Anju Sharma Kaushik, DAG, Punjab.

None for the respondents.

AMIT RAWAL, J.

Present regular second appeal is directed against judgment and decree of the lower Appellate Court, whereby the suit of respondent No.1-plaintiff, for mandatory injunction for removal of the constructed encroachment and obstructions, allegedly on behalf of appellants, with consequential relief of permanent injunction, seeking restraint from making any further construction, dismissed by trial Court, has been decreed.

Respondent No.1/plaintiff, filed the aforementioned suit, on the premise that plaintiff being owner of the plot fully described in the head note of plaint situated in the Municipal limits of Zira, shown by words 'ABCD', in the site plan and on the western side of the plot, a road shown in yellow colour, reserved during the consolidation proceedings, conducted thirty years back and that passage of having 100 ft. wide, was used by public, but two days prior to the filing of suit, the defendants started

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construction at point 'EFGH' shown in red colour and encroached.

Perpetual requests did not yield any fruit.

Aforementioned suit was contested by defendant Nos.2 to 4/appellants by alleging that land belonged to the State of Punjab i.e. provincial Government and a store was raised for the purpose of keeping the construction material of road, but not in the middle of the road and construction had already started on 20.02.1985 and reached the level of roof, whereas suit was filed on 06.03.1995 and by that time, a sum of ₹30,000/- had already been spent.

Since parties were at variance, trial Court framed following issues:-

- 1. Whether the defendants made encroachment by construction in front of the site of the plaintiff forcibly and illegally? OPP*
- 2. Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 3. Whether there is a space of more than 5 feet between the plot of the plaintiff and the construction raised by the defendants? OPD*
- 4. Relief.*

Both parties led extensive evidence in support of their respective cases.

Trial Court, noticing all evidence and the pleadings, while dismissing suit, found that the land belonged to State of Punjab and there was hardly any encroachment as Om Parkash, Kanungo, Local Commissioner, demarcated the place, though proved the site plan, as per it, gap of 11 ft., was found in existence between the boundary wall of the plot of the plaintiff and defendants. The lower Appellate Court reversed the findings.

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Ms. Anju Sharma Kaushik, DAG, Punjab, submitted that land belonged to the provincial Government and the construction was not in the middle of the road, but on side and 11 ft. away from house of plaintiff. There was no encroachment or impediment qua ingress and outgress or light and air. The construction was raised, after sanction of the scheme. Lower Appellate Court abdicated in not referring to that piece of evidence, thus, judgment is based upon the conjectures and surmises and liable to be set aside.

There is no representation on behalf of the respondents despite service.

Since, the appeal is of the year 1989, I proceed to decide the same on merits.

I have heard learned counsel for appellants, appraised paper book as well as the records of Courts below and of view that the following Substantial Question of Law arises for determination-

1. Whether the judgment and decree of the lower Appellate Court is suffering from illegality and perversity.

This Court, vide order dated 04.09.1989, admitted the appeal and vide order dated 26.09.1989 passed in CM No.3498-C of 1989, stayed the operation of the impugned judgment and decree till further order.

The lower Appellate Court, in my view, has ignored jamabandi, which reflected the ownership of the property as that of the provincial Government and the report of the Kanungo, Local Commissioner, Ex.P1) reflected that the construction was 11 feet away from the house of the plaintiff. Respondent No.1/plaintiff has not been able to dispute the aforementioned report through different demarcation. Filing of suit was

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nothing, but an act of greed and arm twisting tactics as no other evidence regarding the impediment and hindrances of the ingress and outgress or light and air, has been placed on record.

Keeping in view aforementioned facts and circumstances, judgment and decree of the lower Appellate Court is not sustainable being suffering from illegality and perversity and the same is hereby set aside and that of the trial Court is restored. The Substantial Question of Law, as framed above, is answered in favour of appellants and against respondents.

Resultantly, present regular second appeal is allowed.

22.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**