

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

**RSA No.5413 of 2016 (O&M)
Date of Decision.13.02.2019**

Yashoda Devi (since deceased) through LRs ...Appellant

Vs

Jasbir Singh ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. I.K. Mehta, Senior Advocate with
Mr. R.K. Dogra, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in claiming mandatory and permanent injunction for issuance of direction to the defendant to remove the encroachment measuring 2.5'x36' over the land left for passage/*gali* on the ground floor for ingress and outgress to the property of the plaintiff and for removal of projection on the first floor shown in the green colour of the site plan attached with the plaint.

It was alleged that plaintiff is the owner of the suit land bearing No.586 purchased by him from the erstwhile owner whereas the defendant after having become owner of property in 1985, in 2006 illegally and forcibly encroached upon the passage shown with letters ABCD in red colour attached with the plaint.

Defendant opposed the suit by taking numerous preliminary objection. On merits, it was stated that he purchased property by virtue of sale deed dated 08.02.1985 and construction was raised as per sanctioned site plan.

Plaintiff in support of evidence proved the sale deed dated 08.02.1985 through the testimony of PW4 and PW5 Gyan Chand and examined in total six witnesses whereas defendant examined seven witnesses and brought on record Ex.D1 to D8 i.e. site plan, gift deed and sale deeds.

Mr. I.K. Mehtra, learned Senior Counsel assisted by Mr. R.K. Dogra, learned counsel appearing on behalf of the appellant submitted that plaintiff proved dimensions in respect of the property purchased by the defendant by virtue of sale deed containing the site plan which was in tandem with the site plan Ex.P2 & P3 whereby encroachment was shown in the red colour and the passage had erroneously been added in the construction, therefore, it was an act of encroachment. Local commissioner also supported the version of the plaintiff, therefore, there is illegality and perversity in not decreeing the suit.

I have heard learned senior counsel for the appellant, appraised the paper book and of the view that there is no force and merit, for, Ex.D2 is the sanctioned site plan. Municipal Committee sanctioned the site plan whereby construction had been raised, which had been endorsed by the testimony of DW3 Balwant Singh, an official of the Municipal Committee, who stated that the site plan Ex.D2 was sanctioned in accordance with law. If at all, there was any deviation, plaintiff was required to implead the Municipal Committee and take action by moving application before the Municipal Committee. The self-serving statement of the local commissioner without noticing the record of the Municipal Committee cannot be a

ground for granting mandatory injunction for removal of the encroachment.

In view of such circumstances, I do not subscribe to the arguments of Mr. Mehta to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 13, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No