

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

**RSA No.5477 of 2016 (O&M)
Date of Decision.12.03.2019**

Shiv Kumar (deceased) through LRs

...Appellant

Vs

Om Parkash and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Aujla, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

The appellant-defendant has not been successful in defending the suit for simpliciter injunction restraining him from obstructing the usage of common passage and staircase shown red in the site plan.

Plaintiff alleged that by virtue of judgment and decree dated 8.11.1982, Amar Nath and Inderjit partitioned the property whereas Amar Nath was held in exclusive possession of the shops marked by letters GHIJ alongside Assandh Road and the shops marked by letters KLMN alongside road to Bhatia Nagar, whereas, Inderjit to be in exclusive possession of vacant plot and shops marked by letters ABCDEF. As regards corner shop and passage marked by letters OPQRST, Amar Nath and Inderjit were held joint owners in possession.

Vide sale deeds Amar Nath and Inderjit in joint ownership sold shop No.1 to plaintiff Om Parkash and plaintiff No.2 purchased the shop from Amar Nath whereas defendant Shiv Kumar purchased the property from Kashmiri Lal and Nand Lal along with right in the passage and staircase. Defendant stated that plaintiffs had separate

passage and therefore, he could not be enjoined. He also claimed that Inderjit had sold the property to the vendors of the defendant and also acknowledged share of defendant.

Learned counsel appearing on behalf of the appellant submitted that there is a candid admission of the plaintiffs having a separate passage towards north, which is not being used by them. In such circumstances, present passage cannot be said to be common passage for both parties. The finding of fact and law with regard to relinquishment of share of Amar Nath is neither here nor there, in view of the aforementioned admission.

I am afraid aforementioned argument is not sustainable, for, it has been proved on record that Amar Nath and Inderjit were having joint share in the corner shop purchased by plaintiff No.1 and the passage and stair case. There is no evidence that Amar Nath ever relinquished his share in the passage or staircase. Sale deeds Ex.D2 and D3 also did not prove relinquishment in the share. The judgment and decree of 1982 was a determining factor, which could not be controverted by defendant.

In such circumstances, injunction as granted by Courts below cannot be said to be suffering from illegality and perversity, 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

March 12, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No