

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

**RSA No.4824 of 2015 (O&M)
Date of Decision.07.03.2019**

Indermani (since deceased) through LRs and others ...Appellants

Vs

Bal Mukand (since deceased) through LRs ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chanan Singh, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.3276-C of 2019

The application for impleading the legal representatives of deceased-appellant Indermani is allowed subject to all just exception and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

The amended memo of parties is taken on record and the registry is directed to put the same at appropriate place.

RSA No.4824 of 2015

The appellants-defendants have not been successful in defending the suit preferred by the respondent-plaintiff for injunction seeking restraint against them from opening any passage at Point P to P1 on the north-east side of Hanuman Mandir and for mandatory injunction directing the defendants to close the window in the wall AD at point W and door in the wall CD at point A and three ventilators in the wall CD opening towards the temple premises falling on the southern side of the temple.

Plaintiff Bal Mukand Sharma stated that he along with

Brij Lal were owners of whole of the building fully detailed and described in the site plan. Owing to some dispute, jurisdiction of the Civil Court was invoked but entered into compromise decree dated 22.11.2000. As per the compromise, portion shown in black colour in the site plan was left for the purpose of temple and the portion shown in the blue colour to the share of legal heirs of Amar Nath namely Indermani, Kanta and Madhu, defendants and yellow to the legal heirs of Puran Chand. No party had right to open any door, window, ventilators or passage through the portion of the temple as there were provisions of streets or road to their respective portions. Since defendants violated the aforementioned compromise by opening window at Point W in the wall AD and a door at point A in the wall CD and three ventilators in wall CD towards the temple portion. Cause of action accrued as defendants did not adhere to the request.

Defendants did not deny the compromise deed but denied existence of the door and the ventilators, much less, existence of any wall at point P to P1.

Both the parties led evidence in support of their pleaded case. The special power of attorney of the plaintiff was examined as PW1 and tendered documents Ex.P1 to P5 and Ex.C1 & C2 whereas defendants examined defendant No.1 as DW1 and brought on record documents Ex.D1 to D5.

Mr. Chanan Singh, learned counsel appearing on behalf of the appellants submitted that plaintiff failed to discharge the onus as he did not step into the witness box and therefore, defendants had

been prevented to ascertain facts from the cross-examination. The attorney did not have any knowledge with regard to previous litigation which was between Puran Chand and Brij Lal through his legal heirs. One line in the cross-examination of Kanta cannot be read into isolation entailing into decretal of the suit. The site plan has also not been proved in accordance with law.

I am afraid aforementioned arguments of learned counsel for the appellants are not sustainable, for, DW1 Kanta in cross-examination candidly admitted the existence of the door at point CD and door opened towards the temple and also existence of the compromise. Once the compromise was admitted, the parties were required to adhere to the same since they derived title from the parties to the previous suit. Non-examination of plaintiff cannot be fatal as special power of attorney was none else but his son, who had knowledge of the existence of street, door, window and ventilators and cannot be said to be personal knowledge to the plaintiff only.

The finding of fact and law in such circumstances 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 07, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No