

RSA-2795-2017 (O&M)

110

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

**RSA-2795-2017 (O&M)
Date of decision : 01.03.2019**

Man Singh

... Appellant

Versus

Data Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Yogesh Goyal, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in claiming injunction against the defendant from raising any sort of construction over the common *rasta*/passage marked with letters ABCD (shown in yellow colour) in the site plan as well as mandatory injunction directing the defendant to remove the construction over the portion of *rasta* and wall marked with letters EF (shown in red colour in the site plan) with a further direction to close the ventilator shown at point 'V' opened towards the house of the plaintiff.

The plaintiff alleged that the parties to the suit land were resident of Village Choga Dagoh, Bhoj Naggal, Tehsil and District Panchkula and the defendant was none-else, but the uncle. The plaintiff was the owner of the house, reflected in the site plan, in question, and the house of the defendant was also reflected. There was a *rasta*/passage

RSA-2795-2017 (O&M)

adjoining to the house of the plaintiff to the main street towards its Southern side. Both the parties had been using the same for egress and outgress. However, in the month of May, 2011, when the plaintiff was out of station, the defendant raised the construction of a wall from point E to F shown in red colour and encroached upon the common passage marked with letters ABCD and also opened the ventilator at point 'V' in the Western side. Despite repeated requests, nothing happen, therefore, the suit, aforementioned, was filed.

The defendant opposed the suit and stated that the simpliciter suit for injunction was not maintainable, as the status of the parties was of co-sharer. It was explained that towards southern side of the house of the plaintiff, kitchen of defendant is in existence, which was *kacha* one. There were two streets adjoining to the house of the plaintiff towards its Northern and Eastern side, which has not been reflected in the site plan and therefore, authenticity of the site plan was disbelieved.

The plaintiff in support of the pleadings examined himself as PW1 and Pritam Singh, his brother, as PW2 and brought on record Ex.P1, site plan. On the other hand, the defendant examined himself as DW1 and Kaka Ram, Draftsman, as DW2 and Jagat Ram as DW3 and brought on record, Ex.D1 site plan.

Mr. Yogesh Goyal, learned counsel appearing on behalf of the appellant-plaintiff submitted that once the Court below rendered a finding that parties were co-sharer, whether a co-sharer can be permitted to raise the construction, even at his peril, in the absence of partition. The answer would be 'No' as the law on injunction against the co-sharer is no longer *res integra* in view of the *ratio decidendi* culled out by the Full Bench of this

RSA-2795-2017 (O&M)

Court in *Bhartu Versus Ram Sarup, 1981 PLJ 204* and reiterated by Division Bench in *Bachan Singh Versus Swaran Singh, 2000 (3) RCR (Civil) 70*. The existence of *rasta*/passage was not emphatically denied.

I am afraid the aforementioned argument is not sustainable in the eyes of law as the plaintiff miserably failed to discharge the onus, as per the provisions of Section 101 of the Indian Evidence Act as no demarcation report, photographs or *aks shajra*, have been placed on record to establish the existence of *rasta* and alleged encroachment, even the assistance of the Local Commissioner had also not been taken. In the absence of the aforementioned evidence, the Courts below had no other option, but to dismiss the suit.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Yogesh Goyal, 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. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

01.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**