

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5388 of 2018 (O&M)
Date of Decision : 22.11.2019

Rajesh Sachdeva

.....Appellant

Versus

Rajinder Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Parminder Singh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondents-plaintiff was decreed by the trial Court vide judgment and decree dated 19.11.2015 and as even the appeal preferred against the said decree failed and was dismissed on 24.04.2018, the appellant-defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for injunction restraining the defendants from blocking the gali shown in red colour in the site plan appended with the plaint by raising any construction and also injuncting the defendants from causing interference in the construction work being carried out by the plaintiff over his plot shown in yellow colour in the site plan.

In the written statement filed by the defendants it was pleaded *inter alia* that in fact plaintiff intended to encroach upon the alleged gali which was private in nature and was meant for exclusive use of the occupants of the gali and the plaintiff had no concern therewith. Further,

the registered sale deed vide which plaintiff alleged to have purchased a plot, there was no mention of the gali in question. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that admittedly plaintiff had purchased a plot vide sale deed Ex.D1 and D3 and the site plan Ex.P1 showed that said plot abuts the disputed gali. It was not in dispute either that disputed gali was connected with the main street and would terminate at the plot of the plaintiff. Thus, the limited issue to be determined was if the disputed gali was a public passage/thoroughfare. The evidence on record such as testimony of the witnesses, photographs, sale deed, site plans and the other documents proved that plaintiff discharged the initial onus to prove that disputed gali was a public street. Not just that photographs PW2/A to PW2/D showed that disputed gali was cemented by central log bricks and was equipped with water taps and sewerage system. J.R. Kalra (DW1) conceded in his cross-examination that disputed street was a public street and was used by the inhabitants of the locality for ingress and egress. Not just that Tilak Raj (DW2) admitted in his cross-examination that disputed gali went in the Municipal Committee. Likewise, Ompal (DW3) conceded in his cross-examination that disputed site had no gates at an entry point from the main gali, which would show that said street was not meant for private/personal usage of a few individuals but for the public at large. That being so, the burden of proof shifted upon the defendants to prove that disputed site was a private street and could be used exclusively by the

defendants. However, they failed to adduce any cogent evidence to substantiate their claim.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

22.11.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No