

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

**RSA No.6074 of 2017 (O&M)
Date of decision:02.04.2019**

Imperial Hotel & Restaurants Pvt. Ltd.

... Appellant

Vs.

M/s J.M.P. Enterprises (Lal Rattan Cinema
Mini Cinema) through Rakesh Malhotra and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Tarun Sharma, Advocate for
Mr. R.S.Bajaj, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby appellant-plaintiff has not been successful in seeking restraint order against the defendants, their partners, directors, attorneys, agents, representatives, administrators, successors, assigns or any other persons from fixing and placing any sort of girders and structures or blocking the passage towards the Northern side of the property.

It was alleged that vide sale deed dated 09.07.1990, the plaintiff had purchased the land from the defendants for a valuable consideration but project of restaurant could not be undertaken. The sale deed gave the specific right to construct the shops abutting from all four sides. The plaintiff's and as well as defendant's tenants were using the passage from Northern side. The partners and employees of the defendant's firm on

30.10.2006 tried to block the common passage, therefore, the aforementioned suit was filed.

Defendant no.1 appeared and filed the written statement and stated that defendant had purchased the property in an open auction and the defendant vide sale deed dated 09.07.1990 registered on 10.07.1990 sold the restaurant along with specific boundaries and admitted the sale deed dated 10.07.1990 with specific boundaries but it was clarified that property on the Northern side was exclusive one being part and parcel of the site which defendant purchased from JIT in an open auction.

During the pendency of the suit, an application for amendment of the plaint under Order 6 Rule 17 CPC was filed as defendant no.1 during the pendency of the suit sold the property without disclosing the name and particulars but the same was dismissed vide order dated 30.04.2010. The amended plaint was filed. Defendant no.2/subsequent vendee also filed the written statement.

The plaintiff examined nine witnesses and brought on record the documentary evidence Ex.P1 to Ex.P21, whereas, defendants also examined the witnesses.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have abdicated in not noticing the averments in the plaint, much less contents of the sale deed which clearly deciphered usage of common passage and cannot claim the exclusive ownership of the passage as per the sale deed of 1990.

I am afraid the aforementioned arguments are not sustainable, for, plaintiff miserably failed to discharge the onus coupled with the contents of the sale deed which did not assign any reasons for using the passage. It is a matter of record that decree of declaration has no binding effect.

As an upshot of my findings, the judgments and decrees of the Courts below cannot be said to be suffering from illegality and perversity. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 02, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No