

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

Date of decision: 21.1.2020

1.

RSA No. 2826 of 2018(O&M)

Sandeep Kumar and another

.....Appellants

VERSUS

Vinod Kumar Gupta

.....Respondent

2.

RSA No. 2827 of 2018(O&M)

Sandeep Kumar and another

.....Appellants

VERSUS

Vinod Kumar Gupta

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikas Kumar, Advocate for the appellants.

REKHA MITTAL, J.

This order will dispose of RSA No.2826 and 2827 of 2018 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.2826 of 2018.

The appellants filed suit for declaration claiming that plaintiff No.1 is exclusive owner of wall GB shown in the site plan, northern wall of property bearing house tax unit No.B-1/643 measuring 59.4 feet in

length and further sought mandatory injunction directing the respondent/defendant to remove five pillars erected illegally and forcibly by making four inch deep cut in the said wall and permanent injunction to restrain the respondent from using the said wall in any manner.

Counsel for the appellants would argue that Parmod Kumar and Vinod Kumar sons of Sh. Shiv Shankar Gupta sold property measuring 112.5 square yards to Sh. Amit Gagneja vide sale deed dated 30.11.1998. In the said sale deed marked as Ex.P3, dimensions of the property subject matter of the aforesaid sale deed were mentioned and it is recorded on page 4 that on the northern side there is 20 feet wall from west to east and the same is joint (mustarka) and at page 6, it is mentioned that wall beyond 20 feet length would be constructed by the vendee at his own expenses and in case the vendor wanted to use the wall constructed by the vendee, they would be entitled to do the same after payment of expenses etc to the vendee. It is further argued that the same property measuring 112.5 square yards purchased by Amit Gagneja was sold to the appellant vide two sale deeds dated 10.01.2003 and 18.04.2003 marked as Ex.P-2 and P-1, respectively. It is further argued that in view of recitals in the sale deed executed by respondent- Vinod Kumar along with his brother Parmod Kumar, the northern wall beyond length of 20 feet was not in existence at the time of purchase made by Sh. Amit Gagneja. Meaning thereby that the said wall beyond 20 feet length was constructed after sale of aforesaid area measuring 112.5 square yards by Sh. Parmod Kumar and Vinod Kumar. It is argued with vehemence that the Appellate Court wrongly accepted Civil Appeal No.231 of 2015 filed by Dr. Vinod Kumar Gupta and dismissed

Civil Appeal No.230 of 2015 filed by the appellants without considering the sale deed Ex.P3. It is further argued that since the appellants are exclusive owners of wall on northern side of property purchased by them from Sh. Amit Gagneja, the respondent/defendant has no right to use the said wall, thus, suit of the appellants for grant of mandatory and permanent injunction is liable to be decreed.

I have heard counsel for the appellant, perused the paper-book and copies of documents Ex.P1 to P3 as well as testimony of Amit Gagneja supplied during the course of hearing.

Perusal of the sale deed Ex.P3, pressed into service by counsel for the appellants makes it evident that Sh. Amit Gagneja, vendee under the said sale deed executed by vendors Parmod Kumar and Vinod Kumar, it was agreed between the parties that northern wall beyond 20 feet length would be constructed by the vendee at his own expenses and in case the vendors would like to use the said wall constructed by the vendee, they would be liable to pay expenses etc to the vendee. It is not plea of the appellants that northern wall beyond 20 feet length was constructed by the appellants or it was not in existence when Sh. Amit Gagneja sold the property vide two sale deeds executed in the year 2003. Sh. Amit Gagneja was examined as a witness by the appellants. In cross examination, he would state that when he raised construction of the building, the same was done after getting measurements. The northern wall has been constructed on common land. As per terms and conditions of sale between the respondent and Amit Gagneja, the latter was entitle to recover expenses etc in case his vendors would use the northern wall constructed by the vendee

beyond 20 feet, at his expense. The appellants being purchasers from Sh. Amit Gagneja, by no means, can claim better rights than their vendor had. In this view of the matter, I find it difficult to accept contention of the appellants that they are entitle to the relief claimed in the suit. In this view of the matter, I do not find any reason to interfere in the judgment passed by the Appellate Court.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed in limine. As the appeals have been decided on merits, applications for condonation of delay in re-filing the appeal are of academic relevance only.

JANUARY 21, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no