

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

RSA-3093-2019
Decided on : 12.07.2022

Reshmo

..... Appellant

Versus

Jarnail Ram and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Satbir Rathore, Advocate
 for the appellant.

Manjari Nehru Kaul, J.(Oral)

Instant appeal has been preferred by the appellant-defendant Reshmo against the judgment and decree dated 14.03.2019 passed by Addl. District Judge, Jalandhar vide which though the dismissal of the suit of plaintiffs-respondents was upheld, however, the appeal was partly accepted and she was asked to remove the overhead projections, which she had constructed over her house. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs filed a suit for permanent injunction to restrain the appellant-defendant, their party men, their agents etc. from opening any door, window, parnala, outlet, over head projection into/towards the private street of the plaintiffs marked as ABCDEF shown in the red colour in the site plan annexed with the plaint. Along with this, mandatory injunction was also sought by the plaintiffs to direct the defendant to close the door on the eastern wall of her house which open towards a Dharamshala.

In the written statement filed by the defendant, she denied the pleaded case of the plaintiffs by submitting that they were neither owners nor in possession of the street in dispute and in fact the street in question was not a private street of the plaintiffs. It was submitted that it was a common street of village Sarhal Mundi, Tehsil Phillaur and had been in existence since times immemorial, which was being frequently used by not only the plaintiffs and defendant, but also other villagers. It was further submitted that the street in question was vested in the Gram Panchayat, who had then paved bricks on it. Not only this, the Gram Panchayat had also constructed drains in the street in dispute for release of waste water from the houses of the plaintiffs, the defendant etc. The defendant further submitted that at the time of aforementioned construction of the drains, no objection was ever raised by anyone much less the plaintiffs. It was categorically denied that the street in dispute was ever in the ownership of Ajit Singh s/o Sadhu Singh as pleaded in the plaint. The defendant still further submitted that she had constructed her house shown in yellow colour, in the site plan with a projection over her house extending towards the street in question at point 'N' and hence, she had easement right to use the street as it was a common street of the village.

The Trial Court while dismissing the suit held that the ownership and possession of the plaintiffs over the property shown in blue colour in the site plan Ex.P-8 was not disputed. Admittedly, the defendant had not carried out any construction/projection or installed any window/ventilation in the passage of the house of the plaintiffs. In addition, the Gram Panchayat had paved the street in dispute with bricks, which was

being used by everyone as a common passage. Hence, the plaintiffs had no right to restrain the defendant from using the passage in dispute, more so, when no evidence was produced by the plaintiffs to show that the door of the house of the defendant opened towards the street in dispute qua which the plaintiffs were seeking mandatory injunction.

The Lower Appellate Court rejected the case set up by the plaintiffs qua the street in question being a private one. The Lower Appellate Court while relying upon Ex.P-2 i.e. sale deed, held that it stood proved that the street in question was a joint street coupled with the fact that the street in question had been paved with bricks by the Gram Panchayat, with no objection whatsoever having been raised by anyone at that time. The street had therefore acquired the character of a public street and all the parties including the plaintiffs and defendant had been bestowed with equal rights qua the same for ingress and egress thereon.

Lower Appellate Court, however, on the basis of evidence led including the testimony of the defendant, who stepped into the witness box as DW-4 held that since she had herself admitted during her cross-examination that the over head projection constructed by her (extending to about 2½ feet over the street in question), was liable to be removed, as she had no authority to do so over a public street. Besides this, learned Lower Appellate Court further held that since it had come in evidence and was a matter of record that plaintiff No.2 Ram Sarup had also constructed over head projection over the street in question, he too was equally at fault and the projection was liable to be removed.

Learned counsel has vehemently argued and reiterated the stand

taken before the Courts below.

Heard and perused the relevant material available on record.

This Court has no hesitation in observing and holding that the judgment and decree of the Lower Appellate Court does not suffer from any illegality. The acts of both the plaintiffs and the defendant without a doubt would have been creating hindrance to the public at large while using the street for ingress and egress. The Lower Appellate Court in the circumstances was perfectly justified in ordering the removal of the unauthorised projections, which were protruding over the street, which as already observed earlier, stands proved to be a public street.

Learned counsel for the appellant has failed to bring to the notice of this Court anything on record from which it could be shown that the conclusions arrived at by the Courts below were contrary to the record or suffered from any material irregularity.

In the circumstances, this Court does not find any error with the concurrent findings recorded by both the Courts below. The appeal being devoid of any merit, stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

12.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No