

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

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**RSA-1436-2021 (O&M)
Decided on : 18.04.2022**

Om Parkash

... Appellant(s)

Versus

Satender Kumar Jain

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Balkar Singh, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

This is the Regular Second Appeal against the concurrent findings recorded by the Courts below. The learned First Appellate Court vide judgment and decree dated 16.09.2021 upheld the judgment & decree dated 05.09.2018, passed by the civil Judge (Jr. Divn.), Gohana, whereby, the suit filed by the respondent/plaintiff for mandatory injunction and permanent injunction against the appellant/defendant was decreed without costs

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The respondent/plaintiff instituted a civil suit for mandatory and permanent injunction claiming himself to be the owner in possession of the suit land measuring 45.83 sq. yards, situated in Killa No. 317/10/1 out of total land measuring 5K-2M. Out of the aforementioned land, the plaintiff sold 50 yards to defendant No.1 vide sale-deed No. 24/1, dated 05.04.2001, wherein, the latter constructed a shop on the southern side of the suit land besides installing a door and constructing steps leading to the land of the

plaintiff. The plaintiff also sold 149 yards out of his land to defendant No.2 vide sale-deed dated 24.06.2003. Defendant No.2 started constructing a building over his plot in the year 2015 besides installing three ventilators, one projection and two windows, all opening towards the land of the plaintiff. It was pleaded by the plaintiff that both defendants No.1 & 2 had thus encroached upon his land by taking advantage of his absence, as he was a resident of Delhi.

In the written statements filed by both defendants No.1 & 2, it was submitted that the plaintiff had sold 149 yards to defendant No.2 vide sale-deed No. 1131, dated 26.06.2003, wherein, it was categorically mentioned that all the rights *qua* the thoroughfare i.e. Rasta awajahi were to be transferred to the defendant. They denied that the plaintiff was either the owner or in possession of the suit property. Rather, it was submitted that the portion of the suit property was a part of the street; the door of the shop of the defendant opened into the said street and not into the land of the plaintiff.

Learned counsel for the appellant/defendant submits that the thoroughfare which the plaintiff was claiming as his own property, in fact, led to a Dharamshala, which was situated on the western side of the suit land. It was submitted that there was no other passage to the Dharamshala and the plaintiff/respondent had not brought on record anything to show the existence of some alternative passage to the said Dharamshala. It was urged that the appellant/defendant had constructed the disputed structures i.e. the wall etc. in the presence of the plaintiff/respondent, who had at no time ever raised any objection *qua* the same. It was further submitted that since the prices of the land had escalated due to its proximity to the National

Highway and State Highway coupled with the fact that the area around the suit property had developed a lot, the plaintiff/respondent had become greedy.

I have heard learned counsel for the appellant(s) and perused the material on record.

Admittedly when the respondent/plaintiff sold his entire land measuring 5K-2M to different persons, the adjoining National Highway was at an elevation of 8-feet compared to the ground level of the above-said land, including the share purchased by the appellant/defendant.

It is evident from the evidence led by the respondent/plaintiff that the suit land was neither sold to any one nor was it left for common thoroughfare, rather, it was kept by him merely as a slope to cover the difference of elevation (8-feet) between National Highway and his land measuring 5K-2M.

Still further, the appellant/defendant was unable to controvert the factum of Dharamshala being in a dilapidated condition for the past many years. Therefore, the contention that the suit land was also being used as a thoroughfare for the said Dharamshala does not hold any ground. The defendants failed to bring anything on record to support their submissions that the suit land was being used as a thoroughfare by the public, for ingress and egress.

Suffice to say that mere recital in the sale-deed without any corroborative evidence would not be sufficient to prove that the suit land was being used as a common thoroughfare. Moreover, the recital of the sale-deed executed (Ex.P2/6) between the plaintiff and defendant No.1 does not show any such common thoroughfare over the suit land. Thus, it is

evident that it is only after the slope over the suit property, had been levelled to the height of the National Highway, the defendants carried out constructions and installed structures in the form of ventilators, projections etc. and opened doors and windows towards the suit property facing the National Highway.

As a sequel to the above, this Court does not find any merit in the instant appeal. No question of law, much less, substantial question of law arises for determination in this appeal. The appeal stands dismissed *in limine*.

(MANJARI NEHRU KAUL)
JUDGE

April 18, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*