

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

201

2023:PHHC:091763

**1. RSA-3427-2003 (O&M)
Date of decision: 20.07.2023**

ASHOK KUMAR **..Appellant**

Versus

SHRI PAL (DECEASED) THROUGH LRS AND ORS **..Respondents**

2. COCP-1611-2020

SANTOSH KUMARI **..Petitioner**

Versus

ASHOK KUMAR **..Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Brahmjot Singh Nahar, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate
and Mr. Saksham Khunger, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. This order shall dispose of a Regular Second Appeal and a separate petition for initiation of proceedings under the Contempt of Courts Act, 1971.

2. One of the plaintiff has filed Regular Second Appeal against the concurrent findings of fact arrived at by the Court below while dismissing the suit for grant of decree of permanent injunction restraining the defendants from blocking the door on the southern side of their house. A counter claim filed by the defendants to direct the plaintiff in the suit to close southern door has been allowed. The entire dispute between the parties is with respect to an open area in front of house of the defendants. It is the

case of the plaintiffs that such open area is a public property which vests in the Cantonment Board, Ferozepur Cantt.

3. Both the Courts on appreciation of the evidence have concurrently found that the plaintiffs miserably failed to prove that such open area is in fact part of public property or it is a common place. No document to prove that the aforesaid area vests with the Cantonment Board has been produced.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. It has come on record that the plaintiff purchased the property by a registered sale deed dated 15.09.1980. In the aforesaid sale deed, on the southern side the property of the defendant has been reflected. There is no mention of any common platform or place. Moreover, in front of the house, which are in one line, there is a street. On both the sides of the street, there is a public drain. The width of the public street is uniform in front of all houses in the street. If the open area is considered to be part of public street, the width of the public street would increase in the front of the house of the defendant but will again reduce from next house. The street is assumed to be straight.

6. Moreover, the Courts on the appreciation of evidence recorded findings of fact, which is not proved to be suffering from misreading or non-reading of material evidence. It is not the case of the plaintiff that any other house has a similar opening towards its southern side.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. The Regular Second Appeal stands dismissed.

9. In a petition for initiation of contempt proceedings, the respondent in the Regular Second Appeal alleges violation of an interim Order passed by this Court in the Regular Second Appeal. Since, the appeal has been dismissed, hence, no ground to continue with the contempt petition.

10. Disposed of accordingly.

11. All the pending miscellaneous applications, if any, are also disposed of.

July 20th, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

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