

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

RSA No. 2995 of 2012 (O&M)

Date of decision : 20.8.2015

Hari Chand

... Appellant

versus

Babu Lal and another

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. D. D. Bansal, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff is before this Court against concurrent findings of fact recorded by both the Courts below whereby the counter-claim filed by defendants/ counter-claimants for permanent and mandatory injunction, was decreed.

In the suit filed by appellant for permanent injunction, the defendants filed counter-claim for permanent injunction restraining the plaintiff-appellant from interfering in their peaceful construction and for mandatory injunction directing the plaintiff to remove the encroachments towards north side of their house, which is between the house of the plaintiff and defendant no.1. The suit filed by the appellant was dismissed under Order IX Rule 8 CPC, whereas the counter-claim filed by the defendants was decreed by the learned trial Court.

Both the Courts below found that the counter-claimants have proved their case that the appellant has encroached upon the area of street. They have produced copy of sale-deed dated 14.10.2004 (Ex.CC1), vide which they purchased the plot, in which existence of street has been shown on the southern side of the plot. The witness Ved Parkash, who appeared as CCW1, stated that the street in dispute which adjoins the house of Babu Lal, had been brick paved by Nagar Council, Maur, but the appellant had raised construction over the same and encroached by fixing his gate, due to which

the light and air has been obstructed along with the passage, whereas on the other side, the appellant failed to produce his sale-deed, which could show the boundaries of the plot. Copy of the sale deed dated 19.1.1993 annexed with the suit filed by the appellant seeking injunction has also been taken into consideration by the learned Lower Appellate Court. The sale-deed clearly depicts that the appellant had street on the northern side of his plot. The appellant in his cross-examination has admitted existence of the street on some portion in front the house of Babu Lal. He has also admitted the photograph of the street, Ex. CX, which clearly depicts the existence of the street ahead of his house and some portion in front of the house of the counter-claimants.

All what has been produced on record by the appellant, is the site plan Mark-H, thumb marked by him, which also goes against him. Both the courts have referred to his conduct regarding not only denying the site plan but also the civil suit filed by him which was ultimately dismissed as withdrawn. There was no document produced on record showing the encroachment made by the counter-claimants. The witnesses examined by the counter-claimants testified the encroachments made by the appellant.

Nothing has been pointed by the appellant, which has been over-looked by both the Courts below, in reaching the conclusion.

For the reasons mentioned above, I do not find that the findings recorded by the learned Courts below are perverse. No substantial question of law arises. The appeal is accordingly dismissed.

20.8.2015
vs

(Rajesh Bindal)
Judge