

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

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**RSA No.2799 of 2013 (O&M)
Decided on : January 12, 2015**

Nand Kishore and anr.

... Appellants

Versus

Harinder Singh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. D.C. Dhaula, Advocate, for the appellants.

Mahavir S. Chauhan, J. (Oral)

This is plaintiff's' Regular Second Appeal against the judgments and decrees of the learned Courts below whereby their suit for perpetual prohibitory injunction has been dismissed. .

Case of the appellants before the Courts below was for grant of a decree of perpetual prohibitory injunction to restrain the respondents from constructing a latrine in front of their (appellants') house in the common path. Their plea was contested by the respondents, issues were framed. Evidence was adduced but the appellants having failed to prove their case, their suit and so also their appeal, was dismissed.

I have heard learned counsel for the appellants.

Though it is argued by learned counsel for the appellants that respondent-Municipal Committee, Rohtak, has admitted plea of the appellants that the latrine is being constructed in front of their house on a public path but it comes out from a reading of the judgments and decrees of the Courts below that appellants have failed to bring any evidence on record to substantiate their plea. Building Inspector of Municipal Committee, who is stated to have made a report in support of the stated encroachment by the respondents has been kept away from the witness stand. Draftsman Kashmiri Lal Malhotra (PW2) examined by the appellants in support of their plea has been disbelieved by the Courts below because he has failed to reveal dimensions and width of the disputed site. The entire case of the appellants is based on the report of Local Commissioner which according to Mr. Dhaula, learned counsel for the appellants, was consequence of appointment of Local Commissioner by the Court and as such, has to be read without insisting upon proof thereof. I am afraid, such a plea cannot be accepted because the report of Local Commissioner has to be proved as per law of evidence and the Local Commissioner has to pass the test of cross-examination. It is not shown to have been done in the case in hand. Even Municipal Committee -respondent No.6, has failed to prove the plea as put up in the written statement filed on its behalf to the effect that both the sides have encroached upon the public street.

In my view, the appellants having approached the Court were obliged to bring cogent and reliable evidence to prove their plea but as aforesaid, they have failed to do so.

Further, the findings recorded by the Courts below are pure findings of fact and no question of law, much less a substantial one, is shown to be involved in the instant regular second appeal.

Consequently the appeal fails and is dismissed.

There is an application for additional evidence but it has not been pressed during the course of hearing. The same is, accordingly, dismissed as not pressed.

12.01.2015
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[Mahavir S. Chauhan]
Judge