

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

RSA No. 3987 of 2013 (O&M)

Date of Decision: December 03, 2015

Krishan Lal and others

.... Appellants

vs.

Municipal Committee

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.P. Chahar, Advocate for the appellants.

Mr. Dinesh Arora, Advocate for

Mr. Ramandeep Singh, Advocate for the respondent.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

CM-10743-C-2013

There is delay of 38 days in filing the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 38 days in filing the present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

RSA-3987-2013

Impugned in the present regular second appeal is the judgment and decree dated 06.03.2012 passed by learned Addl. District Judge, Rohtak, affirming the judgment and decree dated 07.04.2011 passed by learned Civil Judge (Jr. Divn.), Rohtak, vide which the suit of the plaintiffs for possession was dismissed.

The plaintiffs claim that they are owner of the suit property

on the basis of sale deed No.2525/1dated 20.10.1967. It was asserted that in January 2005, the defendant had forcibly taken the possession of the suit land and constructed the boundary wall thereon.

On the other hand, the defendant-Municipal Committee took the plea that the suit property is part of Town Planning Scheme No.7 and was left for public purposes as a park. The park is being maintained by the defendant.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the judgment of the lower appellate court shows that the appellate court after considering the documents produced by the Municipal Committee-defendant in the form of site plan (Ex.D1), report dated 19.10.1977 (Ex.D2) and document (Ex.D3) dated 27.10.1977, came to the conclusion that the park and the boundary wall were constructed way back in the year 1977. Therefore, the public park is existing on the suit property, which falsify the stand of the plaintiffs that the boundary wall was constructed in January 2005 i.e. two years before the filing of the suit.

The plaintiffs also did not attach any site plan with the plaint to show the dimension of their property and what encroachment has been made by the Municipal Committee-defendant and no demarcation was got conducted to show that encroachment was made by the Municipal Committee-defendant.

In fact, it comes out that the park is existing on the suit property, which is claimed by the plaintiffs to be their property. The plaintiffs remained silent from the year 1977 till 2007. Had there been any encroachment on their property, they would have moved one or the other authority immediately. Therefore, I concur with the findings of both the courts below that the plaintiffs had failed to prove that the defendant had encroached upon their property. The findings of facts have been recorded by both the courts below. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

December 03, 2015
sarita

(KULDIP SINGH)
JUDGE