

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

-:-

**R.S.A No. 111 of 2015 (O&M)
Decided on : February 13, 2015**

Prem Raj & Anr.

... Appellants

Versus

Pappu Motors & Car Service Station & Ors.

... Respondents

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

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

Mahavir S. Chauhan, J. (Oral)

Judgment/decreed dated 23.10.2013 passed by learned Additional District Judge, Rohtak, ('first appellate Court' – for short) affirming judgment/decreed dated 05.04.2011 passed by learned Civil Judge (Junior Division), Rohtak, ('trial Court' – for short) is under challenge in this regular second appeal brought by the unsuccessful plaintiffs.

Learned counsel for the appellants argues that though there is sufficient evidence available on record that the property in question is a “gali sare-e-aam” and the plaintiffs have every right to use it but their such right to use it has been threatened by the defendants/respondents, who are out to encroach upon the said “gali sare-e-aam”, but the learned Courts below have failed to read in between the lines.

A perusal of the impugned judgment would reveal that the

appellants approached learned trial Court for a decree of permanent injunction to restrain the defendants/respondents from encroaching upon the suit property stated to be a “gali sare-e-aam” shown by letters ABCDEFG in red colour in the site plan attached with the plaint.

The suit was contested by filing written statements. Issues were framed. Parties adduced evidence. Learned trial Court, on appraisal of evidence in the light of submissions made at the bar, found that the appellants were not able to prove the property in question to be a “gali sare-e-aam” and their right to use it. Accordingly, it dismissed the appellants' suit.

Findings recorded by the learned trial Court have been affirmed by the learned first appellate Court by dismissing appellants' appeal (Civil Appeal No. 253 of 2011/2012).

It also comes out from the record that there is no evidence, whatsoever, to show that the property in question is a “gali sare-e-aam” and any of the doors of the house of the appellants opens towards that “gali”. So much so site plan, Exhibit P/6, the magnacarta of case of the appellants has been found to be unbelievable because appellant No.1 -Prem Raj has himself admitted while appearing as PW-1 before the learned trial Court that this site plan was prepared in tehsil complex when he accompanied by Kela Devi and Krishan went to that place for getting the site plan prepared and that it was not prepared on the spot. Further, it has also been found by the learned Courts below that Kela Devi, a co-plaintiff of the appellants, had earlier filed a suit titled “Kela Devi Vs. Rajinder” which was decreed and in

the site plan attached by her in said suit the property in question was shown to be Maruti Service Station.

Nothing to the contrary has been shown during the course of hearing.

In view of the above, coupled with the fact that the appeal is not shown to involve any question of law much less a substantial one, I regret my disinclination to entertain this appeal.

Dismissed.

No costs.

February 13, 2015
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[Mahavir S. Chauhan]
Judge