

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

R.S.A.No.1078 of 2014 (O&M)

Date of Decision: February 27, 2015

Darya Ram

...Appellant

Versus

Babu Lal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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?

**Present: Mr.Shailendra Jain, Senior Advocate with
Mr.Gaurav Aggarwal, Advocate,
for the appellant.**

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree dated 19.10.2012, whereby the suit of the appellant-plaintiff claiming mandatory injunction for removing encroachment allegedly made by the respondent-defendants on the Rasta as shown in the site plan, has been dismissed by the trial Court and the appeal filed against the judgment and decree of the trial Court has also been dismissed.

Mr.Shailendra Jain, learned Senior Counsel appearing for the appellant-plaintiff contends that both the Courts below have committed a perversity in misreading Ex.P1 and as well as Ex.P2 and the report of the revenue official thereon. He further submits that the appellant-plaintiff has no other Rasta for his house shown yellow in the site plan and, whereas the

Rasta shown red in the site plan had been encroached by keeping the cow-dung, fuel and loose earth on the private Rasta and even the defendant-respondents have started tethering cattle in the Rasta in dispute and, therefore, it was incumbent upon the trial Court to grant injunction in favour of the appellant-plaintiff.

I have heard the learned Senior Counsel for the appellant-plaintiff and perused the judgments and decrees of the Courts below and am of the view that the appeal is liable to be dismissed, being devoid of merit, for the following reasons:-

It is settled law that the appellant-plaintiff has to stand on his own legs to discharge the burden in support of the averments made in the plaint. The appellant-plaintiff has miserably failed to bring on record any direct and cogent evidence in support of his case except by bringing on record the site plan Ex.P1. The appellant-plaintiff, in order to prove the alleged encroachment, ought to have got the demarcation done or taken the assistance of the Court in appointing a Local Commissioner, much less, even no photographs of the alleged encroachment have been placed on record. In the absence of the evidence, the trial Court was left with no other option but to decline the injunction. Even as per the report of the revenue official made on the application (Ex.P2) submitted by the appellant-plaintiff to the revenue official for obtaining the loan for the purpose of raising construction, the property owned by the appellant-plaintiff measures 50'x35', whereas in the site plan no such measurement has been shown and in the said report, there is no mention of private Rasta. In essence, the appellant-plaintiff has miserably failed to prove the case in support of the

averments made in the plaint.

Both the Courts below have rendered a finding of fact and law, based on appreciation of oral and documentary evidence. Accordingly, there is no substance in the appeal, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, the appeal is dismissed.

February 27, 2015
ramesh

(AMIT RAWAL)
JUDGE