

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

R.S.A.No.4708 of 2015

Date of Decision: December 22, 2015

Amrik Madhar & another

...Appellants

Versus

Surinder Mahey & 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.Dinesh Mahajan, Advocate,
for the appellants.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby the suit for recovery of ₹8,64,580/- on account of the damages incurred in execution of the final decree dated 3.8.2004 passed in a civil suit for partition, has been dismissed.

Mr.Dinesh Mahajan, learned counsel appearing on behalf of the appellant-plaintiffs submits that both the Courts below have committed illegality and perversity in not noticing the report of the expert Ex.P-23, who unequivocally stated that the damages have been caused in seeking execution of the final decree. He further submits that the Lower Appellate Court, while dismissing the appeal, filed against the passing of the preliminary decree dated 25.7.1997, directed that the trial Court shall consider the question as to who had raised the construction at the time of passing of the final decree. This aspect, has not been taken into

consideration, much less considered and accordingly the suit had been filed, thus, substantial question of law arises for determination by this Court.

I have heard the learned counsel for the appellants and appraised the paper book.

No doubt, damage to the property existing on the suit land jointly owned by the plaintiff to the extent of 1/3rd share and defendant No.3 to the extent of 2/3rd share had been caused, but the appellants had failed to lead any evidence to show as to whether the construction was raised by them, thus, the direction contained in the order could not have been implemented. The appellant-plaintiffs have to stand on their own legs in proving that the entire costs of construction, which has been allegedly demolished in execution of the final decree by the defendants, has been spent by them. In the absence of any evidence and rightly so, the Courts below have not decreed the suit.

I do not intend to differ with the findings rendered by both the Courts below. There is no illegality and perversity in the impugned judgments and decrees. No substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

December 22, 2015
ramesh

(AMIT RAWAL)
JUDGE