

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

RSA No.3880 of 2014 (O&M)

Date of Decision: November 30, 2015

Raj Kumar

.... Appellant

vs.

Joginder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.P. Singh Ahluwalia, Advocate for the appellant.

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-8983-C-2014

There is delay of 201 days in refiling the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 201 days in refiling the present appeal is condoned, subject to all just exception.

Application stands disposed of.

RSA-3880-2014

Impugned in the present regular second appeal is the judgment and decree dated 15.05.2013 passed by learned Addl. District Judge, Ambala, vide which the two appeals filed by the plaintiff-appellant against the judgment and decree dated 24.09.2010 passed by learned Addl. Civil Judge (Sr. Divn.), Naraingarh, were dismissed. Learned Addl. Civil Judge (Sr. Divn.), Naraingarh had decreed the suit of the present appellant to the effect that the

defendants were restrained from diverting the natural flow of water from the house of the plaintiff through the drain going towards the Johar in front of the house of the plaintiff and in the subsequent suit titled as "Joginder Singh vs Raj Kumar", Raj Kumar was restrained from demolishing the wall at point 'AB' and further from encroaching upon any portion of the property of plaintiff Joginder Singh.

The plaintiff is aggrieved with the injunction granted against him in the subsequent suit.

It comes out that the present appellant Raj Kumar filed a suit for restraining the defendants, who are Sarpanch, members of Gram Panchayat and others, for restraining them from changing the natural flow of drains flowing in front of the house of plaintiff leading to the village *johar* and then to the drain in the *phirni*. Mandatory injunction was also sought against defendant Nos.1 to 3 from demolishing the wall and for directing defendant Nos.1 to 3 to demolish the recently constructed wall, which is blocking the water flow in the said drain in the *phirni*. Another mandatory injunction was sought restraining defendant No.6-Gram Panchayat from removing the filling from the *johar* of the village. One of the defendants, namely, Joginder Singh had also filed a cross suit against Raj Kumar, plaintiff seeking permanent injunction restraining him from demolishing the wall at point 'AB' and encroaching upon any portion of the property of said Joginder Singh.

The abovenoted decree was passed by learned Addl. Civil Judge (Sr. Divn.), Naraingarh.

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

Learned counsel for the appellant has claimed that Joginder Singh has admitted that easementary right is accrued to the plaintiff. It is further stated that the lower court has ignored the material evidence. Therefore, substantial question of law is involved in the present appeal.

After going through the judgments of both the courts below, I am of the view that the findings of the facts have been recorded by the courts below. While deciding question regarding natural flow of drainage water, it was determined in favour of the plaintiff and the question regarding the wall in the cross suit, was decided against him (appellant herein). The easement is to be established independently by establishing the easementary rights. The findings of the facts have been recorded by both the courts below. No substantial question of law arises in the present appeal.

Hence, the present appeal stands dismissed.

November 30, 2015
sarita

(KULDIP SINGH)
JUDGE