

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

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Regular Second Appeal No.4650 of 2014 (O&M)
Date of Decision: September 21, 2015

Hakikat Rai and another

...Appellants

Versus

Sushma Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vishal Munjal, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10817-C of 2014

Prayer in this application is for condonation of delay of 3 days
in re-filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of the counsel, the same is allowed.

Delay of 3 days in re-filing the appeal stands condoned.

RSA No.4650 of 2014

Challenge in this appeal is to the judgment and decree passed
by the District Judge, Pathankot, dated 24.02.2014 by which the appeal
preferred against the judgment and decree dated 19.08.2011 passed by the
Additional Civil Judge (Senior Division), Pathankot, dismissing the suit of
the respondent-plaintiff for mandatory injunction directing the appellants-
defendants to remove the malba/gutter illegally raised in the street and
structure/boundary wall over the common street forming part of Khasra
No.4R/6 shown in the site plan which was appended along with the civil
suit being an illegal encroachment made by the appellants-defendants which

is a common passage in the revenue estate of village Chhottepur, Tehsil Pathankot, has been allowed decreeing the suit of the respondent-plaintiff.

2. It is the contention of learned counsel for the appellants-defendants that as per the evidence which has come on record, specially the statement of PW-1 Swaran Singh, the vendor of the plots on which the construction has been raised by the parties, who are neighbours, the common street was 11 feet wide as per the site plan. Although it has come on record that it is 13.9 feet wide as per the admission of the parties. His contention is that the septic tank and the boundary wall which have been raised are not causing any hindrance in the movement on the street. He states that the septic tank which has been built is an underground tank with no projection over the street level and, therefore, there is no impediment in the movement of inhabitants of the area or the vehicular movement. He, thus contends that the injunction, as has been granted by the learned Lower Appellate Court cannot sustain.

3. This contention of learned counsel for the appellants-defendants cannot be accepted in the light of the fact that the encroachment to the extent of 5' 11" on the common street has been duly proved. Merely because it is not causing any inconvenience cannot be a ground for justifying encroachment upon the public street, specially when there is a 5' 11" wall also constructed on the street which is clear encroachment visible in photographs which have been shown by learned counsel for the appellants-defendants in Court today. The finding recorded by the learned Lower Appellate Court are on proper appreciation of the oral and documentary evidence brought on record by the parties as also the pleadings. No fault, thus, can be found in the judgment passed by the

learned District Judge, Pathankot, dated 24.02.2014 and, therefore, the same is upheld.

4. The appeal stands dismissed.

5. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.10818-C of 2014, also stands disposed of as infructuous.

September 21, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE