

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

RSA-4333 of 2011 (O&M)

Date of decision: 11.02.2016

Sudesh

...Appellant(s)

Versus

Rajbala and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. N.K. Malhotra, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 06.03.2009, passed by the Civil Judge (Sr. Division), Rohtak (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant had been dismissed; and judgment and decree dated 26.07.2011, passed by the learned Additional District Judge, Rohtak (for short, 'the first Appellate Court'), whereby, the findings recorded by the learned trial Court had been affirmed.

The plaintiff filed suit for mandatory injunction directing the defendants to remove the encroachment/obstruction from the street in dispute. The trial Court, vide impugned

judgment and decree dated 06.03.2009, dismissed the suit of the plaintiff.

The appeal filed thereagainst by the plaintiff was also dismissed by the learned first Appellate Court, vide impugned judgment and decree dated 27.07.2011.

Hence, this appeal at the behest of the plaintiff.

The learned counsel for the appellant refers to the document Mark A, allegedly scribed at the instance of the Executive Officer, Municipal Committee, Rohtak, which clearly mentions that the disputed site is part of the street.

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

The suit filed by the plaintiff for mandatory injunction to remove encroachment over the public street was dismissed while recording that there is no positive proof of the disputed area being a public street. The Courts below have noticed that neither the original of Mark 'A' alleged to have been scribed at the instance of the Executive Officer, Municipal Committee, nor this officer was examined as witness to substantiate the assertion. The colony in question is stated to be an unauthorized colony. It cannot be conclusively proved on the basis of document Mark A that the defendant is in unauthorized occupation of the street in question.

No other point is raised.

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

11.02.2016
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(JITENDRA CHAUHAN)
JUDGE