

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

RSA No.1815 of 2012 (O&M)

Date of Decision.06.10.2016

Ganga Ram and another

.....Appellants

Vs.

Om Parkash and others

.....Respondents

Present: Mr. Shiv Kumar, Advocate
for the appellants.

Mr. Vineet Yadav, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.4986-C of 2012

For the reasons stated in the application, delay of 4 days in
refiling the appeal is condoned.

Application is allowed.

RSA No.1815 of 2012

The appellants-plaintiffs are aggrieved of the partial declining
of relief of mandatory injunction by both the Courts below.

Mr. Shiv Kumar, learned counsel appearing for the appellants-
plaintiffs submits that initially the suit for permanent injunction restraining
the respondents-defendants from raising any sort of construction forcibly
was filed but subsequently the relief of mandatory injunction was added as
during the pendency of the suit, the defendants raised construction upon the
portion shown in the red colour in the site plan.

During the pendency of the suit, local commissioner was
appointed and as per his report, there was no encroachment. Though the

objections were filed but the same were dismissed by separate order. However, that order could not have been challenged while filing the appeal under Order 43 Rule 1A CPC, thus, urges this Court for setting aside the judgments and decrees under challenge and for decreeing the suit in toto by formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Mr. Veneet Yadav, learned counsel appearing for the respondents-defendants submits that there is illegality and perversity in the judgments and decrees under challenge while granting the relief of permanent injunction. Though the decree of the trial Court granting the injunction was assailed, in essence, two appeals were preferred, one by the plaintiffs and another by the defendants but both were dismissed by upholding judgment and decree of the trial Court. There is no cross objection to the present appeal. The local commissioner's report could not be shattered despite his detailed cross-examination.

I have heard learned counsel for the parties, appraised the paper book and of the view that the appellants-plaintiffs have miserably failed to discharge the onus viz-a-viz the relief of mandatory injunction though they have been successful with regard to relief of permanent injunction. The report of local commissioner revealed that there was no encroachment. The local commissioner was extensively cross-examined but nothing surfaced. Both the Courts below on the basis of documentary as well as oral evidence have declined the aforementioned relief.

For the foregoing reasons, I do not intend to differ with the finding rendered by the Courts below as the same are based upon documentary as well as oral evidence, much less, no substantial question of

law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 06, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No