

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

R.S.A. No.3469 of 2012 (O&M)

Date of decision: 12.01.2016

Bhajan Kaur

...Appellant

Versus

Kashmir Singh and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Rajwinder Kaur, Advocate for
Mr. Tribhawan Singla, Advocate
for the appellant.

Mr. C. L. Sharma, Advocate
for respondents No.1 and 3.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 25.04.2012, passed by the learned Additional District Judge (FTC), Jalandhar, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 16.07.2009, passed by the learned Civil Judge, Jr. Divn., Nakodar, (for short, the 'trial Court'), has been dismissed.

The appellant-plaintiff filed a suit for mandatory injunction against the respondents-defendants on the ground that the appellant-plaintiff is owner in possession of the house shown in the site plan Ex.P1. The learned trial Court vide judgment and decree dated 16.07.2009 dismissed the suit.

The appeal filed there against by the plaintiff/appellant was dismissed by the learned first Appellate Court vide judgment and decree dated 25.04.2012. The first Appellate Court affirmed all the findings recorded by the learned trial Court after discussing and evaluating the oral as well as documentary evidence on record.

Hence, this appeal at the behest of the plaintiff/appellant.

On behalf of the appellant, it is contended that the learned Courts below have totally ignored the fact that the underground pipes for discharge of the dirty water were already broken and there was no feasibility that the water could flow from these pipes. While referring to the photographs, which are being produced on record by way of additional evidence, the learned counsel states that it is duly proved that because of breakage of these pipes, the water always floods the street.

The learned counsel for the respondents submits that the site marked as ABCD was an open drain, which was removed by the appellant-plaintiff herself and in its place

underground pipes were laid for the outlet of water from her house with the consent of the Gram Panchayat. Therefore, there is no need of open drain for discharging the dirty water of appellant-plaintiff's house.

After hearing the learned counsel for the parties and carefully gone through the entire record on file.

The report of the Local Commissioner has categorically stated that there is no thara constructed by the defendant as alleged by the plaintiff, however, the ramp is there for ingress and egress towards his house, which creates no hindrance in the flow of the dirty water. The plaintiff herself admitted that there are underground pipes, which laid down after closing the open drains which clearly shows that there is no necessity for the reopen of the open drain. Therefore, I find no illegality or perversity in the findings recorded by the learned Courts below.

In **Kashmir Singh Vs. Harnam Singh and another**, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously;

or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions have no merit as these only relate to the appreciation of evidence. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

12.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE