

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3486 of 2016 (O&M)

Date of Decision: November 08, 2016

Vir Pal and others

...Appellants

Versus

Hemi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

AMIT RAWAL, J. (Oral)

The suit filed by the appellant-plaintiffs seeking relief of mandatory injunction and permanent injunction for removal of the encroachment on the plot of the plaintiffs has been dismissed by both the Courts below.

Mr.Shiv Kumar, learned counsel for the appellant-plaintiffs submits that the Courts below have dismissed the suit as no demarcation report has been placed on record. The Courts below also ignored the site plan and the field-book. Forty years back, there was a compromise regarding the rasta, but under the garb of rasta, there is encroachment. The Courts below have dismissed the suit on the ground of its maintainability as appropriate relief of possession had not been sought and, thus, urges this Court for setting-aside of the findings by granting liberty to the appellants to seek amendment of the suit.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book and of the view that no doubt, in the suit for permanent injunction, relief of mandatory injunction could have been

sought of what encroachment was done, during the pendency of the suit, but once the defendants, according to the averments in the plaint, were in unauthorised possession, proper and actual remedy was to file a suit for possession by asserting the exact area of the illegal encroachment by taking the assistance of the revenue authorities or the competent officer by getting the property demarcated, so that the suit is based upon some foundation. Thus, the finding given by the Courts below qua its maintainability is perfectly legal and justified. However, nothing prevented the appellants to seek the possession of the property in accordance with law.

For the foregoing reasons, the impugned judgments and decrees are upheld.

Appeal stands dismissed.

November 08, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No