

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

RSA No. 2690 of 2015 (O&M)
Date of decision: January 5, 2016

Bhim Singh

...Appellant

Versus

Satish and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

Present: - Mr. Sanjiv Gupta, Advocate
for the appellant.

K. KANNAN, J. (Oral)

1. The appeal by the plaintiff is against the dismissal of the two courts below for a prayer against the defendants for mandatory injunction for removal of alleged encroachment on the drain in the portion marked as 'FGHI' and removal of cement tank at point 'K'.

2. The plaintiff's own house is on the North of the defendants' house. Abutting the plaintiff's house in the North is a street and there is also a street running North to South along side the western boundary of the plaintiff's house. It can be visualized, therefore, that plaintiff's house was at the junction of the two streets forming a 'T'. The defendants' house is situated South of the plaintiff's house. The plaintiff's contention is that there

was a drainage channel running along side the gali on the West from North to South and the defendants have now obstructed the free flow of the water by causing encroachment in the portion referred in the plaint.

3. The defence was that the plaintiff's house and the portion commencing from the defendants' house upto the corner at the place of junction of the two roads slope from South to North, while from the house of the defendants further down there was a slope from the North to South. According to him, water cannot flow for the plaintiff from North to South, since it would be against the slope but the water could be drained only from the defendants' house from North to South. The plaintiff himself had moved an application dated 4.9.2006 to the Deputy Commissioner for inspection of the site and the latter directed the BDPO to submit a report in this regard. The report of the BDPO vindicated the defendant's stand that upto the house of the plaintiff flow of drain was from South to North and thereafter from the North to South from the house of the defendants. In effect, it meant that the place where the alleged encroachment has been made at 'EGHI' there was a raised ground and consequently the drain water from the plaintiff's house could not be drained from the North to South. A witness from the plaintiff's side, namely, PW2 admitted to the topography of the property as sloping from South to North outside the plaintiff's house, the place where the plaintiff was claiming a drain and from the North to South from near the outlet of the defendant's house. The courts below have relied on the report as well as the admission by the plaintiff's witness to decline the relief. The consideration of the case has been purely factual and there is no substantial question of law for interference.

4. The second appeal is dismissed.

January 5, 2016
prem

(K.KANNAN)
JUDGE