

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

RSA No.3268 of 2015 (O&M)

Date of Decision.15.11.2016

Kanihya Lal

.....Appellant

Vs

Radha Krishan and others

.....Respondents

Present: Mr. S.S. Khurana, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.7872-C of 2015

For the reasons stated in the application, delay of 20 days in
filing the appeal is condoned.

Application is allowed.

RSA No.3268 of 2015

The appellant-defendant No.1 is aggrieved of the concurrent
finding of fact whereby the suit of the respondents-plaintiffs for permanent
injunction has been decreed by both the Courts below.

Mr. S.S. Khurana, learned counsel appearing for the appellant-
defendant contends that the plaintiff-respondent had not come in Court with
clean hands as they have encroached upon the public street and therefore,
equity demands that their suit should have been dismissed. Both the Courts
below have failed to appreciate the provisions of Section 52 of the Haryana
Municipal Act whereby notice was required to be issued by the plaintiffs to
the Municipal Council. Even the reliance upon the report of the local
commissioner was wholly perverse as it has not mentioned the

encroachment done by the plaintiffs-respondents, thus, urges this Court for setting aside the judgments and decrees passed by both the Courts by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant-defendant No.1, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Khurana, for, the appellant-defendant No.1 miserably failed to prove that alleged construction over the public road was done after obtaining sanction from Municipal Committee. On the contrary, the plaintiffs have proved the alleged encroachment by photographs Ex.P2 to P11. Even defendant No.1 did not appear in the witness box to belie the stand of the plaintiffs.

The local commissioner inspected the spot in the presence of both the parties and its report Ex.P22 clearly revealed that the construction was still going on and the width of the passage towards the house of plaintiffs was found as 7'x3" as shown in the site plan Ex.P23. He further reported the existence of 5'x9" long and 2'x6" wide porch above 9' from the ground level i.e. passage. Moreover, DW1, Rajender Singh, JE from Municipal Council deposed that defendant No.1 was not permitted to raise projection at the front towards public passage and the construction raised was/is without sanction.

As regards the argument of Mr. Khurana regarding want of notice under the Haryana Municipal Act, I am of the view that such a plea was not available to the person who did not even dare to stand in the witness box and the Municipal Council did not even file any appeal and therefore, there is no illegality and perversity in the findings rendered by the

Courts below.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below as the same are based upon the correct appreciation of fact and law, 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

November 15, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No