

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

RSA No.3893 of 2015

Date of Decision.14.09.2016

Thakur Dass

.....Appellant

Vs.

Jugal Kishore

.....Respondent

Present: Mr. Vaibhav Sehgal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit for mandatory injunction to remove the encroachment marked by letters A B C D in the site plan has been dismissed.

Mr. Vaibhav Sehgal, learned counsel appearing for the appellant-plaintiff submits that in the earlier round of litigation, the defendant had filed the suit claiming the alleged encroachment of his ownership and finding was not in his favour. In fact the case of the appellant is that it is a public street and though witnesses who have been examined have also reiterated the stand taken in the plaint, the Courts below have erroneously declined to grant the injunction.

I have heard learned counsel for the appellant and appraised the paper book. In the previous round of litigation, it has been proved that it is not a public street. Once it is proved that it is not a public street, the foundation of the present suit is encroachment on the public street and therefore, the contention of Mr. Sehgal, learned counsel for the appellant during the course of hearing/dictation that he should be given liberty to approach the concerned regulatory authority is also misplaced. The

appellant-plaintiff has failed to discharge the onus as to whether the street is public or not. Unless and until it is not established, he cannot seek the injunction as noticed above.

For the reasons aforementioned, I do not intend to differ with the concurrent finding rendered by the Courts below as the same is based upon correct appreciation of documentary as well as oral evidence, much less, no ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No