

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

RSA-641 of 2016 (O&M)

Date of decision: 03.05.2016

Shital Kaur and another

...Appellants

Versus

B.D. Verma

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Naveen Upadhyay, Advocate for
Mr. Ravi Malhotra, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

CM-1741-C-2016

This is an application for condonation of delay of 08 days in refiling the appeal. It is averred that the appeal was filed on 13.10.2015 within limitation but the same was returned with objections on 08.12.2015. Thereafter, the appeal was refiled on 05.01.2016 but the same was again returned with objections on 06.01.2016. The appeal was again refiled on 28.01.2016 but the same was again returned on the following day of 29.01.2016. The delay in question is neither deliberate nor intentional but due to above reason mentioned above.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 08 days in refiling the present appeal is hereby condoned subject to all just exceptions.

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The suit for permanent injunction filed by the plaintiff/respondent was decreed by the trial Court vide judgment and decree dated 18.09.2014.

2. Aggrieved against the findings of trial Court, the appellants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 19.08.2015.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellants.

4. The sole argument raised by the learned counsel is that the appellants have constructed a septic tank within boundary wall of his house adjoining to the wall of the plaintiff/respondent which is objected to by the respondent. He refers to the testimony of PW-1, Surjit Singh, wherein he has stated that the septic tank constructed by the appellants is not in a public street and it has

been constructed on the property of the appellant but both the Courts below have failed to consider the above crucial fact. The possession of the appellants over the property in dispute is duly established, vide sale deed dated 27.10.1989, Ex.D1 and agreement dated 06.11.1989, Ex.D2. There is no seepage in the room of the respondent through the wall.

5. Heard, the learned proxy counsel for the appellant and perused the record carefully.

6. The houses of the parties are adjoining to each other. The septic tank was constructed by the appellants adjoining the wall of the respondent. As per the appellants, the septic tank has been constructed on their own property, however, the same has resulted into damage to the house of the respondent apart from the fact that the septic tank being part of the common wall emanates foul smell engulfing the entire house. PW-1, Surjit Singh, SDO, Municipal Corporation, Jalandhar has duly testified that the room of the respondent has been completely damaged due to dampness emanating from the septic tank and the drainage constructed by the appellants. It affects the health of the entire family and property of the respondent-plaintiff. Further, the reports Ex.P2 to Ex.P7, prepared by Sanitary Inspector duly proved that there was no provision for outlet of sewerage water and gas coming out of the

gutter from the storage of sewerage water constructed by the appellants is injurious to health of residents of the adjoining houses. The appellant No.2 has admitted in his cross examination that there is no space left between the wall of the septic tank and the wall of the house of the respondent. The septic tank has been constructed with bricks and has thickness of four inches. He has also admitted the fact that seepage is bound to occur through the said wall of four inches width being made with bricks. He has also admitted in his cross examination that Corporation authorities had demolished the septic tank constructed by him. Thus, both the Courts below have rightly observed that the appellants have failed to claim existence of any title qua the portion where the septic tank has been constructed. Therefore, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed.

7. 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.

03.05.2016

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(JITENDRA CHAUHAN)
JUDGE