

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

RSA No.919 of 2015 (O&M)

Date of Decision.05.08.2016

The Joint Commissioner, Municipal Corporation, Faridabad

.....Appellant

Vs.

Devi Ram and others

.....Respondents

Present: Mr. Vikas Malik, Advocate and
Mr. Naresh Kumar, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

C.M. No.9750-C of 2016

For the reasons stated in the application, order passed by this Court on 27.07.2016 is recalled and the appeal is restored to its original number.

Application is allowed.

C.M. No.2686-C of 2015

For the reasons stated in the application, delay of 29 days in refiling the appeal is condoned.

Application is allowed.

C.M. No.2687-C of 2015

For the reasons stated in the application, delay of 1 day in filing the appeal is condoned.

Application is allowed.

RSA No.919 of 2015

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit of the respondents-plaintiffs for permanent injunction restraining them from demolition of any portion of the house, said to have been purchased on 20.01.1981 and construction completed in the year 1982-83, has been decreed by the trial Court and upheld by the lower Appellate Court.

Mr. Naresh Kumar, learned counsel appearing for the appellant submits that the plaintiff had encroached upon the area to the extent of 3'.0"x5'.9"x60'.0"/2 out of 15 feet wide passage and in this background of the matter, the notice was issued for demolition of the same. The suit was not maintainable for non compliance of the provisions of Section 389 of the Haryana Municipal Corporation Act and therefore, it was liable to be dismissed. The trial Court had not examined the aforementioned aspect and tread on an arena of surmises and conjectures which is not as per the provisions of Section 389 of the Haryana Municipal Corporation Act, as it did not decide the controversy on preponderance of the evidence. Under these circumstance, the suit of the respondent-plaintiff was liable to be dismissed and thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. The admitted fact is that the construction was raised on the land. As to whether it was an encroachment or not, the burden of the same was on the defendant to show that with regard to particular measurement the plaintiff was in unauthorized possession. Since no demarcation had been

done or no site plan had been filed, the defendants, in my view, have not proved the alleged encroachment in consonance with their alleged action of demolition of the excess area of the portion of the house. It is in the aforementioned circumstances, the trial Court had no occasion to decree the suit. I am of the view that in case the defendants are actually aggrieved of the alleged encroachment, they shall be at liberty to comply with the procedure as per demarcation after affording the opportunity to the respondents-plaintiffs and not in a manner and mode as has been done.

I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same were based on correct appreciation of documentary as well oral evidence, much less, no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 05, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes