

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

**RSA No.1435 of 2015 (O&M)
Date of Order: 16.08.2017**

Surajbhan and another

..Appellants

Versus

Gautam

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishwajeet Singh, Advocate, for
Mr. Keshav Pratap Singh, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

Defendants have filed this regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for permanent injunction restraining the defendants from interfering into his peaceful possession with respect to land measuring 2 kanals 2 marlas, comprised in khasra no.282. It was further prayed that the defendants be restrained from creating any passage over the aforesaid land. Relief of mandatory injunction was also prayed directing the defendants to close the gate/door, which has been installed by the defendants in their wall adjoining the northern boundary of the land of the plaintiff.

Defendants appeared and contested the suit. It was claimed that the defendants have constructed a house in khasra no.240/2.

Learned trial Court after appreciating the evidence available on the file, held that a Local Commissioner had visited the spot and demarcated the land vide his report, Ex.PW2/B, dated 14.08.2006. As per the report, it

was found that the defendants have encroached upon and constructed latrine (toilet) on 18 sq. feet land of the plaintiff. The suit was, thus, partly decreed with respect to land measuring 18 sq. feet.

First appeal preferred by the defendants-appellants was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellants has submitted that the exchange as alleged by the plaintiff is not proved on the file. He has further submitted that the defendants have been directed to hand over vacant possession of land measuring 18 sq. feet, although, there was no prayer to that effect.

I have considered the submissions of learned counsel for the appellants. I do not find any substance in the submissions.

Learned Courts below have relied upon the report of the Local Commissioner. None of the Court has relied upon the alleged exchange between the parties. Both the Courts have refused to rely upon the writing dated 15.08.1981, therefore, there is no force in the argument of learned counsel for the appellants.

Learned counsel for the appellants has further submitted that directions have been issued to hand over possession of 18 sq. feet on which defendants have constructed latrine. He submits that such direction is beyond the prayer made by the plaintiff.

The plaintiff had made a prayer for handing over vacant possession of the land on which toilets have been constructed. Plaintiff had further made a prayer for demolition of the construction. Therefore, there is no force in the argument of learned counsel for the appellants.

I do not find any reason to interfere with the concurrent

findings of fact arrived at by the Courts below. Counsel for the appellants has not been able to point out any substantial questions of law or any ground which may permit this Court to interfere in exercise of its power under Section 41 of the Punjab Courts Act, 1918.

The regular second appeal is dismissed.

August 16, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No