

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

**RSA No.5389 of 2015 (O&M)
Date of Order: 01.09.2017**

Bed Ram

..Appellant

Versus

Rakesh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surender Saini, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.12833-C of 2014

Prayer in this application is for condonation of delay of 13 days in filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the delay of 13 days in filing the appeal is condoned.

R.S.A No.5389 of 2015

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiffs had claimed that there is a 13 feet wide street towards southern side of their house. Plaintiffs had further claimed that there is a drain which passes in front of the house of the defendant and thereafter goes towards the house of the defendant. But defendant has raised level of the drain. Thus, there is a hindrance in the free flow of the water from the house of the plaintiffs towards the house of the defendant.

Defendant denied the existence of the street. However, the defendant admitted that Haryana State Agricultural Marketing Board is constructing a Nali(drain) which the plaintiff has blocked.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit with respect to the street but ordered that the defendant should reduce the level of the drain so that there is a free flow of water in the drain.

Plaintiffs did not file any appeal, only defendant has filed an appeal. The first appellate Court also after re-appreciating the evidence available on the file, dismissed the appeal.

Learned counsel for the appellant has argued that the judgment and decree passed by the Courts below are result of misreading of the evidence. He further submits that the suit filed by the plaintiffs with regard to the street has been found to be false, no relief could be granted. However, learned counsel for the appellant has stated that the aforesaid blockage has already been cleared by the defendant.

I have heard counsel for the appellant and with his able assistance gone through the record.

In the present case, learned trial Court had appointed a Local Commissioner to visit the spot and report about the factual situation. The Local Commissioner had reported in his report dated 08.04.2010 that the drain has been blocked with soil, stones, bricks and on account thereof, exit of filthy water is blocked resulting in accumulation of filthy water in front of the house of the plaintiffs. On the basis thereof, learned trial Court directed the defendant to lower the level of drain so as to provide free flow of water.

In these circumstances, it cannot be said that the suit filed by the plaintiffs was liable to be dismissed in toto, particularly when the Local Commissioner had reported that the drain has been blocked by the defendant.

Learned counsel for the appellant has further argued that the Courts below have misread the evidence.

I have considered the submission and with his able assistance gone through the evidence led by the parties.

In the present case, the learned Courts below have relied upon the report submitted by the Local Commissioner. The aforesaid report of the Local Commissioner has not been challenged. In view thereof, I do not find any force in the submission of learned counsel for the appellant.

For the reasons recorded above, there is no scope for interference with the concurrent findings of fact arrived at by the Courts below. The appeal is dismissed.

September 01, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No