

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

**RSA No.2579 of 1994 (O&M)
Date of decision:21.05.2018**

Union of India through Home Secretary, Chandigarh, Chandigarh
Administration ...Appellant

Vs.

Bhupinder Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suvir Sehgal, Senior Standing Counsel with
Mr. Deepak Malhotra, Advocate and
Mr. Akshay Sethi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-Chandigarh Administration is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit of the respondent-plaintiff seeking recovery of ₹40,314/- has been decreed by the trial Court and affirmed by the Lower Appellate Court.

The respondent-plaintiff instituted the suit that he being owner of SCO No.39-40, Sector 17-C, Chandigarh adjoining the bridge constructed by the Government and common wall between the bridge and the property in question was built by the plaintiff himself at his own expenses. The common wall was built for which the plaintiff incurred a sum of ₹80,628/-. The said common wall has been used by the Government and under the Capital of Punjab Act, 1952 and the rules, the Government/neighbourer is liable to be the 50% of the costs of construction

of the common wall to the plaintiff which comes to ₹40,814/- and in this background, suit aforementioned was filed.

The suit was contested by the defendant on the premise that suit was not maintainable, much less not properly valued for the purposes of Court fee and jurisdiction.

Since the parties were at variance, the trial Court framed as many as seven issues including the issue of Relief. The respondent-plaintiff in support of the averments in the plaint examined himself, whereas, appellant-defendant examined four witnesses. The trial Court on the preponderance of evidence decreed the suit and the Lower Appellate Court affirmed the findings.

Mr. Suvir Sehgal learned Senior Standing Counsel assisted by Mr. Deepak Malhotra, Advocate and Mr. Akshay Sethi, Advocate for the appellant-defendant submits that the respondent-plaintiff miserably failed to prove the existence of common wall because there were two pillars which had been erected, therefore, applicability of bye-laws could not have been pressed into service. It was incumbent upon the respondent-plaintiff to produce on record the same report for substantiating the claim in the plaint. Though the amount as decreed by the Court below had been paid but the dispute is that whether the wall could be brought within the expression “common”, therefore, principle of equity was not available. The onus as enshrined under Section 101 of Indian Evidence Act, has not been discharged. All these facts have not been taken care of by the Courts below, thus, there is gross illegality and perversity and thus, urges this Court for

setting aside the judgments and decrees under challenge.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sehgal, for, written statement had not only been vague but evasive. There is no denial with regard to the existence of common wall. Concededly, factum of ownership of respondent was not disputed as well as erection of pillars. The only question which arises before this Court is whether there is existence of common wall or not. Obviously once two pillars had been erected, wall in between would fall within the expression “common”. This is what the import of the judgments and decrees of the Courts below. Since the execution of the decree had been satisfied, the appeal is only an academic/farcical exercise.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No