

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

RSA No. 1520 of 2016 (O&M)

Date of decision : 12.09.2018

Puran Lal

....Appellant

V/s

Budh Ram & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sachin Mittal, Advocate for the appellant.

RAJAN GUPTA J.

Present appeal has been preferred by appellant aggrieved by judgments of two courts below. Learned counsel for the appellant has submitted that there is a complete misreading of evidence by both the courts below. According to him, impugned judgments have been passed without taking into consideration material facts on record. Interference is thus called for in second appeal.

I have heard learned counsel for the appellant.

A suit was instituted by plaintiffs-respondents seeking permanent injunction to restrained the defendant-appellant from encroaching upon their residential property marked as EFGHIJKCD in the site plan to the extent of 4'-8" towards east and west and 45'-0" towards north and south and 45' towards North and South as marked by letters IJCL, adjacent to the property of the defendant and also raised a wall upto the height of 7'-7" towards South and West and upto the height of 2'-10" towards East on

27.11.2010 illegally and forcibly. It was averred that suit property was situated within the municipal limits of Ferozepur Jhirka. Defendant was having residential property marked as ABCJ adjacent to the property of plaintiffs. The construction raised by the defendant on the property of plaintiffs was illegal, forcible and property had been encroached by raising a wall even after status-quo was passed. It was thus, prayed that suit property be restored in its original position. Suit was contested by defendant. He filed written statement and took number of preliminary objections. On merits, he submitted that plaintiffs were neither the owner nor in possession of the suit property. They had filed the present suit just to grab his land. Thus, suit was not maintainable. On the basis of evidence led before the trial court, it found substance in the plea of the plaintiffs. It found that plaintiffs by leading cogent evidence had been able to prove their possession over the suit property and defendant had illegally encroached on the same. It, thus, decreed the suit and restrained the defendant from encroaching over the same and from raising any sort of construction or opening any window, ventilator etc towards the suit property. It also directed the defendant to restore the suit property in its original position by removing any unauthorized construction/wall. Aggrieved, defendant preferred an appeal before the lower appellate court. It, however, dismissed the appeal holding that construction raised by defendant was beyond his property and any construction raised beyond the property would amount to encroachment. Learned counsel for the appellant has not been able to show any infirmity with the findings arrived at by two courts below warranting interference in second appeal. I am thus of the considered view that appeal is without any

merit. Same is hereby dismissed.

As the main appeal has been dismissed on merits, no order needs to be passed in the accompanying application.

September 12, 2018
Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No