

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

**RSA No.2502 of 2016 (O&M)
Date of Decision:30.07.2018**

Richhpal @ Ram Rich Pal @ Palu Ram through LRs

...Appellant(s)

Versus

Naresh Kumar through LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Kartar Singh Malik-I, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-6621-C-2016

Application is allowed. Annexure A-1 is permitted to be placed on record.

Main case

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, while decreeing a suit for permanent injunction, preventing the appellant from blocking the passage and restraining him from erecting a wall.

The plaintiff claimed that he purchased the property through sale-deed dated 19.11.1996 and as per the sale-deed, there was a street on the northern side, which is 5 feet wide. The plaintiff further claimed that this five feet wide street was being blocked by the defendant.

The defendant contested the suit and pleaded that the property in dispute is part of Plot No.2 and he is owner in possession of the land as per the sale-deed dated 3.8.1988.

Both the courts, after appreciation of evidence available on the

file, have decreed the suit filed by the plaintiff and recorded a finding that the defendant failed to prove that no street is in existence on the northern side of the plot of the plaintiff. The courts have further found that the defendant did not lead any evidence to prove that the property in dispute is part of Plot No.2 Min East, as is claimed by the defendant.

Learned counsel for the appellant has submitted that there was an agreement to sell and total payment was made and therefore the plea of the plaintiff is incorrect.

It will be noticed that argument being raised by the learned counsel for the appellant is neither part of his pleadings nor evidence regarding the same was produced before the courts below. The argument being raised is required to have factual foundation which has not been laid. The defendant-appellant cannot be permitted to raise an argument which has not been raised before the courts below.

In view thereof, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

30.07.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No