

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

**RSA No.3715 of 2016
Date of Decision.14.05.2018**

Tirath Singh (deceased) through LRsAppellant

Vs

Narinder Singh and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satbir Rathore, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking permanent injunction restraining the defendant from constructing water channel as the defendant had obstructed the same, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The defendant had filed the written statement by raising preliminary objection and also filed the counter-claim against the plaintiff.

The appellant-plaintiff did not appear in the witness box and the suit as well as the counter-claim both were dismissed.

Mr. Satbir Rathore, learned counsel appearing on behalf of the appellant submitted that opportunity of hearing should have been granted by the lower Appellate Court when the appeal was preferred as the cause of action still subsisted.

I am afraid that the aforementioned argument of Mr. Rathore is not sustainable, for such, type of litigation cannot be given protection of the Court, for, the suit was filed way back in the year

2007 and continued to be remained pending till 2012 and for all this period, no effort had been made to lead evidence. If at all, there had been actual grievance, nothing prevented the plaintiff to lead evidence.

Mr. Rathore also argued that earlier the application for impleadment was pending and thereafter, for some amendment, therefore, the plaintiff may be granted one opportunity to lead evidence.

The aforementioned statement of Mr. Rathore is also devoid of merit, for, the tenor and mode of the judgment reveals that from 2007 till 2012, the plaintiff had not taken effective steps to lead evidence, much less, he did not himself appear in the witness box.

In view of the aforementioned, the findings rendered by the Courts below are perfectly legal and justified. The argument of Mr. Rathore has not been able to bring the case within the realm of illegality and perversity enabling this Court for forming a different opinion than the one already arrived at, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 14, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No