

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

**RSA No.2567 of 2015 (O&M)  
Date of Decision.03.12.2018**

Chhaju Singh

...Appellant

Vs

Satyawan and others

...Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ramender Chauhan, Advocate  
for the appellant.

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**AMIT RAWAL J. (ORAL)**

The appellant-plaintiff has not been successful in defending the appeal preferred by the defendants against the judgment and decree dated 14.11.2013 of the trial Court, restraining the defendants from diverting the flow of rainy and dirty water of the street in question shown in yellow colour in the site plan Ex.PW4/B from Point F to I and E to I through a cement pipe in the village pond as shown in green colour of the site plan Ex.PW4/B, has been reversed.

Mr. Chauhan, learned counsel appearing for the appellant submitted that the plaintiff sought injunction on the point that the defendant had unauthorizedly diverted the flow of rainy and dirty water by laying sand, which resulted into blockage of the pipe as well as defendant had also illegally encroached upon panchayati land. The site plan Ex.PW4/B depicted the correct position. The lower Appellate Court relied upon the site plan Ex.DW4/A, which was not

in consonance with the site plan Ex.PW/5/2 prepared by the local commissioner after inspecting the spot. Site plan of local commissioner and that of the plaintiff was as per the actual and factual aspect at the spot. The lower Appellate Court, thus, committed illegality and perversity by referring some part of the cross-examination of the plaintiff, which could not have been read in isolation.

I am afraid the aforementioned argument of learned counsel for the appellant is not sustainable, as the plaintiff in cross-examination candidly admitted that he had put sand in front of house as his house is at higher level. In such circumstances, flow of the rainy and dirty water would make a natural course and definitely flow into houses of residents of area. Though the defendant had not sought injunction against the plaintiff through any counter-claim or independent proceedings as the law of injunction is not only based upon factual aspects but as well as equity. It is settled law that a person who seeks equity must do equity. Once there is candid admission with regard to placing of sand, which was in tandem with the report of the local commissioner, natural flow of the water was diverted to the area situated in eastern side where the property of other villagers was in existence. The factum of receipt of notice by the Gram Panchayat qua encroachment had also not been denied. All these factors weighed in the mind of lower Appellate Court to form a different opinion than the one arrived at by the trial Court.

The finding of fact and law arrived at by the lower Appellate Court, in my view, is based upon the documentary as well

as oral evidence and cannot be found to be suffering from illegality and perversity. No ground for interference is made out. The second appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**December 03, 2018**

Pankaj\*

Whether Reasoned/Speaking    Yes

Whether Reportable                No