

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

RSA No.2628 of 2015 (O&M)

Date of decision : 26.11.2018

Ishwar Singh

...Appellant

Versus

Rajian and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Narender Kajla, Advocate for respondent Nos.2 to 4.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing suit for permanent injunction restraining the defendants from using his exclusive wall shown in the red colour and also for mandatory injunction to remove the heaps of bricks collected by the defendants and for direction to the defendants to repair the wall by spending ₹1,22,943/- as also for removal for latrine.

The defendants contested and pleaded that the wall in question is 18 inch wide and belongs exclusive to them as property ABCD had fallen to their share in the family partition. A Local Commissioner was appointed who reported after carrying out the local investigation that it is an old wall having huge recesses (cavities) for fabricating cupboard etc. which are in

existence towards the side of the defendants. Apart therefrom the Courts have further found that there are two other small recesses created and that also are towards the defendant's side. On the basis of the evidence so led and the report of the Local Commissioner, both the Courts have recorded a finding that the plaintiff has failed to prove his case as set up in the plaint.

Learned counsel for the appellant submitted that now since the wall has been completely demolished, therefore, a finding should be at least recorded that it is a common wall.

This Court has considered the submissions, however, in absence of any evidence to the effect that the wall in question which has already been fallen down was common, this Court does not find any material to record such finding.

Both the Courts on appreciation of the evidence have recorded a finding of fact which is not established to be erroneous or suffering from any perversity. Hence, there is no ground to interfere.

Regular Second Appeal is dismissed.

26.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No