

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

RSA No. 4189 of 2016(O&M)

Date of decision: 2.7.2018

Tarlok Singh

....Appellant

VERSUS

Surinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Salar, Advocate for the appellant.

Mr. Naresh Parbhakar, Advocate for the respondent.

REKHA MITTAL, J.

CM No.10772-C of 2016

Prayer in this application is for condoning delay of 47 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. S.S. Salar, Advocate, the application is allowed. Delay of 47 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.4189 of 2016

Challenge in the present appeal has been directed against consistent findings recorded by the Courts below whereby suit filed by the appellant/plaintiff for mandatory injunction directing the

respondent/defendant to remove encroachment from a common public street was dismissed vide judgment and decree dated 01.08.2013 passed by the trial Court and the appeal preferred by the appellant did not find favour with the Additional District Judge, Jalandhar.

The case set up by the appellant is that the respondent/defendant has illegally and forcibly encroached the common public street to the extent of 2.5 feet and he may be directed to close the window opening towards street in question and further to remove the platform/thada just opposite to the main gate of house of the defendant in the said street. Further prayer was made for grant of permanent injunction restraining the respondent from raising any kind of construction over the portion shown red in the site plan attached with the plaint and also not to encroach upon any part of the street fully described in the head-note of the plaint.

On 19.08.2016, notice of motion was issued. A relevant extract therefrom reads as follows:-

“Contends that there was misreading of the oral and documentary evidence as the respondent-defendant accepted the site plan Ex.P1 to show that there is encroachment.

Mr. Salar, Advocate during the course of hearing, submits that he does not have any objection to opening of the window except for reduction of the width of the street by constructing the alleged ramp.

Notice of motion for 10.01.2017.”

Counsel for the appellant would urge that a categorical plea was raised by the appellant in para 4 of the plaint that the respondent has encroached upon the public street by constructing thada/platform and fixing doors on the window in June 2010 and the said fact was reiterated by him in his testimony on oath. The Courts committed serious error by misreading the evidence to hold that the alleged encroachment is in existence since house was constructed by the respondent in the year 1960. It is further argued that the street in question is 5 feet wide and in case the encroachment made by the respondent by constructing thada/ramp is allowed to continue, it would cause great hardship and inconvenience for the appellant to use the street in question for egress and ingress to his house.

Counsel representing the respondent has supported consistent findings recorded by the Courts with the submission that neither the judgments suffer from perversity nor raise a question of law that requires determination in Regular Second Appeal.

During the course of hearing, counsel for the appellant produced before the Court copy of site plan, stated to be marked as Ex.P1. Perusal of the site plan makes it evident that it does not make reference to the length and width of the alleged platform/thada whereby the street in question is stated to have been encroached. The photographs produced in evidence are marked as A1 to A-3, tendered into rebuttal evidence. The photographs have not been proved in accordance with law nor they give the measurements of the alleged encroachment by way of construction of a thada/platform.

During the course of evidence and arguments, the appellant sought to introduce that the respondent/defendant has constructed a culvert/ramp for taking scooter inside his house as level of the street is 1 feet lower than level of the house of the respondent.

Order 7 Rule 3 of the Code of Civil Procedure, 1908 (in short 'the Code') provides for the particulars to be contained in a plaint where subject matter of the suit is immovable property. A relevant extract therefrom reads as follows:-

“3. Where the subject matter of the suit is immovable property.- Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identity it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

As in the case at hand, the appellant has not given description of the alleged encroachment by constructing a thada/platform either in the plaint or in the site plan appended thereto, the suit is liable to be dismissed on this score alone. This apart, the appellant has averred that the respondent has encroached the common street to the extent of 2.5 feet by raising construction of a platform/thada and opening the window towards the street. As per the order of notice of motion, appellant gave up his claim qua opening of the window and raised the issue only in respect of reduction of the width of the street by constructing the alleged ramp. There is no material on record to clarify as to what is the extent of encroachment/reduction of the width of the street by constructing ramp when otherwise there is no such pleading that the respondent has

constructed a culvert as against thada/platform stated in the plaint. In this view of the matter, I do not find any reason to interfere in the judgments passed by the Courts below even though the reasoning adopted by the Courts is different from what has been noticed and discussed hereinbefore.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

JULY 2, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no