

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

RSA No. 4516 of 2016 (O&M)

Date of decision : 13.09.2018

Ram Kuwar @ Kavar

....Appellant

V/s

Balkishan @ Bale & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Keshav Pratap Singh, Advocate for the appellant.

RAJAN GUPTA J.

Aggrieved by the judgments of two courts below, appellant has filed the instant appeal. Learned counsel for the appellant submits that both the courts below have completely ignored from consideration the evidence on record. According to him, judgments passed by the courts below are not sustainable and, thus, liable to be set-aside.

I have heard learned counsel for the appellant.

Brief factual background of the case is that appellant-plaintiff filed a suit for mandatory injunction seeking direction to defendant-respondent no. 1 to remove illegal encroachment marked as letters EBCF in the site plan, over the street in question; alternatively for permanent injunction to restrain him from raising any further construction over the same. It was averred that parties to the suit were residents of ward no. 5, Meham and were using common street marked as letters ABCD in the site plan. However, defendant no. 1 had illegal raised construction over the said street due to which plaintiff and other inhabitants of the locality were facing inconvenience. Repeated requests to remove illegal encroachment over the

street in question were made to defendant no. 1 but he turned deaf ears to it. The matter was also reported to respondent no. 2-Municipal Committee, Meham but no action was taken which necessitated the plaintiff to file the instant suit. Suit was resisted by defendant no. 1 who denied the averments made in the plaint by filling the written statement. He took the stand that street in question was his personal street left by his grandfather and no encroachment was made by him. According to him, respondent no. 2-Municipal Committee, Mehan had no concern with the same. Trial court after appraisal of evidence available on record came to the conclusion that plaintiff was not entitled to the relief prayed for. It, thus, dismissed the suit. Findings were unsuccessfully challenged before the lower appellate court. I find no infirmity with the orders passed by the courts below. Both the courts on the basis of evidence on record came to the conclusion that plaintiff had not been able to prove on record that street in question was a public street and respondent no. 1 had raised any illegal construction over the public street. After going through the judgments rendered by two courts below, I find no infirmity with the appreciation of evidence. Accordingly, present appeal is without any merit and is hereby dismissed.

CM No. 11746-C of 2016

As the main appeal has been dismissed on merits, no order needs to be passed in the instant application.

September 13, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No