

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

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**RSA-4707-2016 (O&M)
Date of Decision : 7.8.2018**

Dalla

....Appellant

vs.

Punna and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Karan Singh, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

CM-12171-C-216

For the reasons recorded, the application is allowed. Delay of 3 days in refiling the appeal is condoned.

Main Case

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for injunction filed by the respondents.

The case of the respondent was that between his house and the house of the appellant there was a joint street and consequently sought an injunction restraining the appellant from closing that area by putting gate thereon.

The case of the appellant on the other hand was that property in dispute was actually owned by the first cousin of the respondent and the appellant had exchanged his land with hers and had become owner. Both the Courts below have noticed that that person with whom the appellant had

allegedly exchanged the property had not been examined by him. Both the Courts below noticed that admittedly in the disputed area not only the window but also the drains of the respondent were opening. On the basis of these circumstances, both the Courts came to the conclusion that property in dispute was joint property and consequently, decreed the suit and that is why how this appeal.

Learned counsel has argued that the respondent had himself admitted that property in dispute had not been sold by his cousin but exchanged by the appellant. I have gone through the deposition. The deposition could also be read to conclude that the property exchanged by his cousin was towards the rear side of his property and cannot be held only to read that the land in dispute does fall within the exchanged area. Both the Courts below have rightly held that to prove his case it was incumbent upon the appellant to have examined the person with whom he had exchanged property and his omission to do so probalilized the case of the respondent. I see no reason to take a different view.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

7.8.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No