

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

RSA No.5167 of 2016(O&M)

Date of Decision:19.11.2018

Gopal Krishan

.....Appellant

Vs.

Naresh Aggarwal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Naveen Bawa, Advocate for the
appellant.

AMIT RAWAL J.(Oral)

The Appellant-plaintiff has not been successful in defending the appeal preferred at the instance of the defendant against the partial decree of the suit whereby the defendants were directed to remove the encroachment and construction made on the portion of property shown in blue colour in the site plan Ex.P6 forming part of House No.B-XX-611/C, situated at Ferozepur Road, Ludhiana and to hand over the vacant possession of the same to the plaintiffs within three months. Plaintiff had instituted the suit on the premise that after the partition of the suit property had been in possession of the same since long but the defendants unauthorizedly had encroached from the area after raising the construction. The aforementioned act of the defendants is an outcome of a suit filed by the defendants for mandatory and permanent injunction. The defendants opposed the suit denying the encroachment on any portion of the plaintiff but pleaded, it was the plaintiff who had encroached upon the undivided common passage.

On preponderance of the evidence and arguments as noted above
the trial Court had partly decreed the suit.

Mr.Bawa, learned counsel appearing on behalf of the appellant-plaintiff submitted that Lower Appellate Court has committed illegality and perversity in reversing the judgment of the trial Court to the extent noted above without appreciating the fact that the site plan Ex.P3 has been proved on record to establish the encroachment.

The defendants had collected material and during the night had raised the wall from AB & BC on the site plan Ex.P6. In fact, the said area belongs to the plaintiff. The site plain Ex.P4 was prepared at the time of family settlement arrived at by way of mutual consent.

I am afraid the aforementioned argument is not sustainable as the best possible evidence to establish the encroachment would have been the demarcation report. Lower Appellate Court has gone through each and every oral and documentary evidence. Concededly, no such demarcation report has been brought on record. In such circumstances, trial Court could not issue mandatory injunction in the manner and mode noted above.

Judgment and decree of the Lower Appellate Court is upheld.

Dismissed.

(AMIT RAWAL)
JUDGE

19.11.2018
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No