

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

**RSA No.5224 of 2016 (O&M)
Date of Decision.14.12.2018**

Janak Singh

....Appellant

Vs

Sardari Lal and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rai Singh Chauhan, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.13578-C of 2016

For the reasons stated in the application, delay of 65 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.13579-C of 2016

For the reasons stated in the application, delay of 43 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.5224 of 2016

The appellant-plaintiff has not been successful in
claiming relief of injunction mandatory in nature directing the
defendants to remove the encroachment on the portion of 4 karams on
village phirni comprising of khasra No.128.

It was alleged that plaintiff along with his brother was
owner in possession of the plot measuring 3 marlas, Khewat No.49,
Khatoni No.60, Khasra No.364 and the 4 karams wide on the

southern side village phirni in respect of Khasra No.128, Khewat No.447, Khatauni No.800. The defendants for the last three years have raised the walls and obstructed part of the village phirni over khasra No.128 and refused to vacate the same, thus, cause of action accrued.

Defendants opposed the suit and raised the objection of locus standi of the plaintiff.

Plaintiff in support of the averments, examined himself and tendered into evidence Ex.P1 to P6 including the demarcation report whereas the defendants examined themselves and closed the evidence.

On preponderance of the evidence, trial Court dismissed the suit and appeal laid before the lower Appellate Court was also dismissed.

Mr. Rai Singh Chauhan, learned counsel appearing on behalf of the appellant submitted that site plan prepared by the local commissioner Ex.P6 and the demarcation report clinched the encroachment at the instance of the defendants, despite that Courts below abdicated in not decreeing the suit. The site plan of the plaintiff was in consonance with the site plan of the local commissioner. Once the onus was discharged and in the absence of any rebuttal, trial Court had no occasion to decline mandatory injunction.

I am afraid aforementioned argument is not sustainable, as the demarcation report did not establish the encroachment as projected in the site plan and as well as testimony of the plaintiff. In

such circumstances, plaintiff, in my view, failed to discharge the onus in order to succeed in the suit. In other words, provisions of Section 101 of the Indian Evidence Act were not complied with.

I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 14, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No