

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

RSA No.560 of 2016

Date of Decision: 14.02.2018

Jasbir Singh

.....Appellant

Vs.

Kapoor Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.K.Kakkar, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

The appellant has come up in appeal against the judgment of trial Court dated 01.12.2014 and learned appellate Court dated 08.07.2015 whereby, the suit for permanent injunction restraining the defendant from obstructing the plaintiff from constructing boundary wall at points AB and CD were shown in the site plan (Annexure P-1) has been dismissed.

The concurrent findings of facts recorded by both the Courts are that as per fard khasra girdawari for year Sauni 2013 to Hari 2014 Ex.D1 and jamabandi for the year 2010-11 Ex.P1 pertaining to the suit land, the defendant Kapoor Singh is owner in possession of land including the land in question. As such, the plaintiff is owner of the whole land as per the revenue record and therefore he cannot be restrained from protecting his land. Though the defendant has admitted the possession of plaintiff over the house in question but he cannot be allowed to make any such construction which may infringe the right of owner of the property in question. It has further held that there was both the witnesses PW2 and PW3 examined by plaintiff have deposed in the present case due to their enmity with the defendant. After scrutinizing the testimony of PW2 Balbir Singh PW3 Surinder Pal Singh, the Court found that PW2 Balbir Singh has admitted in his cross-examination that defendant filed election petition against him before the Election Tribunal regarding panchayat elections. He

also stated that Surinder Pal another witness in this case is lambardar of village and Kapoor Singh defendant has filed complaint to revenue officer regarding collection of excess chowkidara PW3 has also deposed in his cross examination at page No.2 on 14.03.2014 that Kapoor Singh and his son have filed a complaint against him before Tehsildar, he voluntarily stated it is false. The perusal of the deposition of both these witnesses of plaintiff, apparently shows that there is some sort of personal rivalry between them and the defendant Kapoor Singh and as such they have the reason to depose against defendant. While perusing the testimony of PW1 to PW3, the Court noticed one more point that put a dent upon the averments of plaintiff. The plaintiff has pleaded that Kapoor Singh defendant came with anti social elements to restrain him from constructing the wall in question. The same version has been made by all PWs in their examination in chief but all these witnesses have testified in their cross-examination in very clear words that there was no anti social element with the defendant on 26.02.2012 when he came to restrain the plaintiff from constructing the wall in question. Such contradictory version of PWs recorded in their examination in chief and cross examination itself create a shadow of doubt on their deposition. After scanning the whole evidence available on file, the trial Court has considered that the plaintiff remained failed to produce any cogent and convincing evidence to establish his case. Therefore, plaintiff is not entitled for the relief of permanent injunction as sought by him. The learned appellate Court has also upheld the judgment of the trial Court on the same findings of fact.

So in view of the above, the orders of the Courts below do not reflect any material irregularity or perversity which warrant interference. Hence the present regular second appeal stands dismissed.

(RITU BAHRI)
JUDGE

14.02.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No