

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

**RSA No.4467 of 2015(O&M)**

**Date of decision: 13.7.2018**

Madhu Bala

....Appellant

VERSUS

Mukesh

.....Respondent

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Abhishek Yadav, Advocate for the appellant.

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**REKHA MITTAL, J. (Oral)**

**CM No.5411-C of 2018**

Heard.

Document Annexure A-1 is taken on record subject to just exceptions.

Disposed of accordingly.

**RSA No.4467 of 2015**

The present appeal directs challenge against the judgment and decree dated 20.01.2015 passed by the District Judge, Rewari whereby appeal filed by the respondent/defendant against the judgment and decree dated 15.06.2012 passed by the trial Court was accepted, judgment and decree of the trial Court were set aside and suit filed by the appellant/plaintiff seeking permanent injunction was dismissed.

As per case set up by the appellant/plaintiff, she purchased property in abadi of Dharuhera shown in blue colour being part of a large property shown as ABCDEFGH in the site plan attached with the plaint by

way of registered sale deeds No.204 and 205 dated 15.05.2008. It has been averred that in the outer chowk (a type of open area) she constructed latrine and bathroom shown in red colour marked DIJK in the site plan. In the other corner, defendant who is stated to be co-sharer in the joint baithak (room) adjoining the chowk constructed his own toilet but he is bent upon to demolish the toilet constructed by the appellant.

Counsel for the appellant, in response to a pointed query by the Court, is not in a position to assail findings of the Court in appeal that perusal of the sale deeds Ex.P2 and P3 would make it clear that what was purchased by her was an area measuring 85 square yards i.e. 60 square yards vide sale deed Ex.P2 and 25 square yards vide Ex.P3. From the description given in the sale deeds, there is a common chowk and a kholi within the haveli beside which there is an outer chowk. The dispute is about the outer chowk in which the toilets have been constructed.

The appellant has failed to adduce any evidence that her vendor had raised construction of a toilet in the outer chowk or possession thereof was given to the appellant/plaintiff. As a matter of fact, the appellant failed to adduce any evidence with regard to existence of any toilet in the outer chowk when she purchased the property in May 2008. By raising construction of a toilet subsequent to purchase in May 2008, she filed a suit for injunction in September 2008 with a clear intent to create right with regard to her entitlement to use the toilet in question constructed in the outer chowk. No sooner the appellant failed to prove her right to raise construction in the outer chowk and her possession over the area underneath the toilet being an established possession, the Court in appeal has rightly rejected her claim for grant of discretionary and equitable relief of injunction while setting aside the judgment and decree passed by the

trial Court. I do not find an error much less perversity in the judgment of the Court in appeal, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only. No order as to costs.

**JULY 13, 2018**

‘D. Gulati’

**(REKHA MITTAL)**

**JUDGE**

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no