

RSA No.4994 of 2015 (O&M)

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

RSA No.4994 of 2015 (O&M)  
Date of decision: 01.02.2018

Narender and another

.....Appellants

versus

Bal Kishan and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: - Mr. Sudhir Aggarwal, Advocate, for the appellants.

**RAMENDRA JAIN, J. (ORAL)**

Defendants have preferred this regular second appeal laying challenge to the judgment and decree dated 15.05.2015 of the First Appellate Court, Gurgaon, affirming the judgment and decree of the trial Court dated 29.11.2014, but with some modification, whereby the suit of respondent No.1-plaintiff was partly decreed, thereby restraining the appellants from demolishing the wall shown in red colour in the annexed site plan Ex.PW1/D granting liberty to them to raise construction and use the disputed wall towards their own side only.

Put pithily, respondent No.1-plaintiff filed a suit for permanent and mandatory injunction to restrain the appellants from demolishing the alleged common wall 'CD' detrimental to his interests.

Upon notice, appellants contested the suit.

The trial Court after holding trial restrained the appellants from demolishing the aforesaid wall while granting liberty to them to raise construction and use the wall in dispute towards their own side only vide

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judgment and decree dated 29.11.2014.

In appeal preferred by the appellants, the First Appellate Court modified the aforesaid relief to the extent that the appellants would be at liberty to raise construction and use the wall towards their own side to the extent of half share in accordance with law specifically not detrimental to the other co-sharer vide judgment and decree dated 15.05.2015.

Learned counsel for the appellants submits that both the Courts below failed to appreciate that respondent No.1-plaintiff had admitted that wall in dispute was in existence prior to the construction of his house, therefore, it is evident that disputed wall was not a common wall amongst the parties. From the report of the local commissioner Ex.DX/6 it is evident that only on a small portion of the wall in dispute upon which roof of respondent No.1-plaintiff's room 'A' exists with the consent and permission of the appellants, therefore, both the Courts below ought to have decreed the suit.

Having given considerable thought to the submissions made by learned counsel for the appellants, I find the instant appeal completely devoid of any merit for the reasons to follow.

No question of law muchless substantial arises or raised for consideration in this appeal.

Admittedly, no document of title was produced by the appellants qua disputed wall. Therefore, in the absence of any such document, both the Courts below have rightly declared the wall in dispute as common wall.

The entire case from both the sides is based on preponderance of evidence and probability. Since either of the parties could not produce any

evidence qua title to the disputed wall what to talk of cogent and

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convincing, therefore, this Court is not inclined to differ with the concurrent findings of both the Courts below.

I have gone through the impugned judgments and find no illegality or perversity in the same.

In view of above, present appeal, being completely devoid of any merit, is hereby dismissed.

**February 01, 2018**

R.S.

**(Ramendra Jain)**  
**Judge**

Whether speaking/reasoned    Yes/No

Whether reportable                Yes/No.