

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

**RSA No.6939 of 2016 (O&M)
Date of decision:08.05.2018**

Rajinder Singh Chauhan

... Appellant

Vs.

Sardara Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. U.K.Agnihotri, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

The appellant-plaintiff in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for permanent and mandatory injunction against the defendants from creating any sort of obstruction created by the defendants at passage on point AB by constructing a wall upto the height of 4 feet in the street shown in red colour in the site plan, has been dismissed by the trial Court and upheld by the Lower Appellate Court.

The appeal is accompanied by an application seeking condonation of delay of 282 days in filing the appeal on the premise that counsel in the Lower Appellate Court had assured that Regular Second Appeal would be filed and thus, the appellant-plaintiff remained under bonafide plea and thereafter, filed the appeal. The application is supported by an affidavit of appellant.

Mr. U.K.Agnihotri, learned counsel for the appellant-plaintiff submits that appellant-plaintiff purchased the two biswas of land, vide sale deed dated 15.03.2004, wherein, it was specially provided that there was a street at point A to B which has been blocked by the defendants by raising wall having 4 feet height at point AB, therefore, cause of action accrued to seek injunction from raising further construction as well as mandatory injunction.

The defendants denied the existence of said passage having width 5 feet in front of houses of plaintiff and one Rai Singh Chauhan. The property was demarcated through Sub Registrar, Kalka on 12.01.2005, i.e., prior to filing of the suit which was filed on 09.06.2010. However, the same had not been proved on record, therefore, it has been marked as Mark B. The Courts below could not have non-suited the appellant-plaintiff by not referring to the aforementioned documentary evidence, therefore, there is gross illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that findings of facts and law arrived at by the Courts below cannot be tinkered with, for, except self-serving statement of plaintiff, no other evidence has been brought on record to prove that there was encroachment at the instance of the defendants. The demarcation report is dated 12.01.2005, whereas, sale deed is of 15.03.2004 and the suit was filed on 09.06.2010. In case, the demarcation was done in 2005, no explanation has come forth in filing the suit in the year 2010. It cannot be said to recurring

the cause of action for infinite period. All these facts weighed in the mind of the Courts below. Even if the demarcation report has been tendered into exhibit, the same could not be taken into consideration, for, having been not proved on record. Mere exhibition of the document do not dispense with its proof.

In view of the aforementioned observations, I am of the view that the concurrent findings of facts and law cannot be interfered with until and unless there is gross illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal is dismissed on merits as well as on limitation, for, explanation given in the application is most atrocious and the party cannot be permitted to pursue the litigation at ease as noticed above.

(AMIT RAWAL)
JUDGE

May 08, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No