

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

**RSA No.6964 of 2016 (O&M)
Date of Decision:19.04.2018**

Sham Lal Gulati and another

...Appellants

Versus

Lajja Wanti

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ram Bilas Gupta, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-18046-C-2016

Applicants seek condonation of delay of 3 days in filing the appeal.

Application is supported by an affidavit.

Application is allowed. Delay of 3 days in filing the appeal is condoned.

Main case

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiff filed a suit for permanent injunction, restraining the defendants from ejecting, dispossessing the plaintiff from Chubara and the staircase and also from raising any kind of construction on the roof of Chubara. The plaintiff claimed that she had purchased the property through registered sale-deed dated 24.5.1996 from Jagdish Lal and defendants are interfering in her possession and are not permitting the plaintiff to use the

aforesaid staircase.

The defendants contested the suit and pleaded that they had purchased vide sale-deed dated 10.8.2004 which includes shop on the ground floor and roof rights constructed on an area measuring little bit more than one marla.

The learned trial court noticed that the defendant Sham Lal when appeared in the witness box admitted that the plaintiff is in possession of the property. The court further noticed that the sale-deed executed in favour of plaintiff clearly stipulates that staircase would be used by the plaintiff. Sham Lal, who appeared on behalf of the defendant, admitted that Lajja Wanti, Vijay Kumar and Sarup Chand all three use staircase in order to have access to the upper floors of the building.

On appreciation of evidence, the learned trial court decreed the suit. The appeal filed before the learned first appellate court was also dismissed, after reappreciation of evidence available on the file.

Learned counsel for the appellants has been heard at length.

Learned counsel for the appellants has submitted that the staircase is for common use and, therefore, the defendants cannot be restrained from using the same.

I am afraid such argument cannot be accepted at this stage when in none of the courts below, the defendants-appellants have raised this plea or have raised this defence. For the first time before this Court a new argument cannot be permitted to be raised. Learned counsel for the appellants could not point out any misreading of evidence or non-reading of evidence available on the file.

No other argument was raised.

In view of the above, there is no good ground to interfere in the concurrent findings of fact arrived at by the courts below. The Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of.

19.04.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No