

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

117

**RSA No. 706 of 2016 (O&M)****Date of Decision: August 01, 2018**

Mukesh

...Appellant

Versus

Kailash Chand

...Respondent

**CORAM:-HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. K.S. Malik-I, Advocate  
for the appellant.

**ANIL KSHETARPAL, J. (Oral)****CM-1899-C-2016**

This is an application for seeking exemption from filing  
certified copy of impugned judgment and decree.

For the reasons mentioned in the application, same is  
allowed.

**CM-1900-C-2015**

This is an application under Section 151 C.P.C. For placing  
on record Annexure A-1 to A-3.

For the reasons mentioned in the application, same is  
allowed.

**RSA No. 706 of 2016**

1. Plaintiff-appellant is in the regular second appeal against  
concurrent finding of fact arrived at by the Courts below. Plaintiff has  
filed the suit for mandatory injunction for issuing directions to the  
defendants to remove the encroachment carried out by constructing

stair case. It was claimed that property in dispute is a private street and no one else has right to make any opening towards this street. Both the Courts have found that father of the plaintiff had previously filed a suit claiming that the street is a private street in which it was conclusively held that the street is not a private street.

2. Learned counsel for the appellant has submitted that even if it is assumed that street is common still no one can be allowed to encroach upon the same. He has submitted that therefore the courts committed an error in dismissing the suit.

3. This Court has considered the submission. The suit filed by the plaintiff is not for removal of an encroachment from a public street but suit filed is for directing the respondents to remove the encroachment as the property belongs to him. Now at this stage the plaintiff cannot be change his stand. There is no foundation laid by the plaintiff that it is a public street and no one has right to encroach upon the same.

4. Keeping in view the aforesaid facts this Court does not find any good ground to interfere with the concurrent finding of fact. However, appellant-plaintiff would be at liberty to seek redressal of grievances, if he has, after laying foundation that street is a public street and no one has any right to encroach thereupon.

**(ANIL KSHETARPAL)**  
**JUDGE**

**August 01, 2018**

neeraj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No