

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1092 of 2017 (O&M)

Date of Decision: December 03, 2018

Hassan Mohd.

...Appellant

Versus

Sami Khan

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Saleem Ahmed, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM Nos.2508-C and 2510-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, delay of 197 days in re-filing and 3 days in filing the appeal is condoned.

Applications stand disposed of.

RSA No.1092 of 2017

Appellant-plaintiff has not been successful before the Lower Appellate Court in defending the appeal preferred by the respondent-defendant against the judgment and decree dated 21.10.2015, whereby the defendant was restrained from opening the water outlets of his roof and ventilators towards the plot of the plaintiff.

Plaintiff alleged that he is owner in possession of a residential house as detailed in Para 1 of the plaint as per the sale deed No.358 dated 16.05.1989. The plot of the defendant was located on the eastern side of the suit property. In other words, the plots of the plaintiff and defendant are adjacent to each other and, therefore, the defendant has no right to open

water outlets and ventilators towards the property of the plaintiff.

The defendant opposed the suit by disputing the site plan placed on record. It was alleged that there were old ventilators and windows in the house towards the western side and one old Chabutra was in existence towards the southern and eastern sides. The upper portion of the house was under construction but the plaintiff did not raise any objection. There is a Rasta Sare-Aam towards the western-northern side of the house of the defendant and a Rasta towards the northern side, whereas 10 feet common passage from north to south was also constructed by the Gram Panchayat.

The trial court, on the preponderance of the evidence and as well as Local Commissioner's report, decreed the suit.

Mr. Saleem Ahmed, learned counsel appearing on behalf of the appellant-plaintiff submitted that the Lower Appellate Court has abdicated in reversing the findings without noticing the fact that the defendant in the evidence admitted non-existence of the street. Local Commissioner reported that the defendant had kept the bricks for raising construction. That itself was a clincher. There is no reference to the report of the Local Commissioner, therefore, there is abdication.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the aforementioned submissions as the Lower Appellate Court did not notice the statement/cross-examination of the plaintiff, noticed by the trial court regarding existence of the street. The water outlets, therefore, could not have fallen in the plot of the plaintiff but in the street. The admission of the plaintiff fortified existence of the street between two houses. In such circumstances, the Lower Appellate Court, being the last court of fact and

law, after appreciating the evidence reversed the findings, which cannot be said to be suffered from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 03, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No