

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

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RSA No.1448 of 2018 (O&M)

Date of Decision : 09.03.2018

Smt. Parmeshwari and others

..... Appellants

Versus

Sushil and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Devinder Singh, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for mandatory injunction filed by the respondents for a direction to respondent No.3-Municipal Committee, Barwala to remove the encroachment on the street which had been done by the appellants.

The case of the respondents No.1 and 2 was that predecessor of appellants No.1 to 3 had filed a suit against Puran in which it had been claimed that the width of the street between their houses was 11 feet and the predecessor-in-interest of the appellants had suffered a decree to this effect and consequently the unauthorized encroachment which was subsequently made by the appellants be removed.

The case of the appellants on the other hand was that after that decree of 1975 a written compromise had been effected between the parties as per which, it had been accepted that prior to the decree a written compromise had been effected between the parties whereby it had been agreed that the width of the street between the houses was 7 feet.

Both the Courts below held firstly that the decree was subsequent to the compromise and secondly even that written compromise was not placed on the record. Along with the appeal an application bearing *CM No.3741-C-2018* has been filed to place on record a copy of the compromise. However the grounds under which an application under Order 41 rule 27 can be allowed are not satisfied at all in this case. Once the case of the appellants at the very inception was based on the compromise there was no reason why the same was not placed on the record. The explanation now given that it was inadvertently not placed on the record can not be accepted. Consequently the application is declined.

Both the Courts below came to the conclusion that the appellants were not able to wriggle out of the decree suffered by their predecessor-in-interest and that is how the appellants are before this Court.

Learned counsel has argued that in fact the earlier decree was against the facts and law.

In my opinion, once the predecessor-in-interest of the appellants had suffered the decree, the only grounds open to the appellants to challenge the same would be those on which a contract could be set aside and not that it was not as per the facts or law.

In the circumstances, no fault can be found with the judgments of the Courts below.

Consequently, the appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

09.03.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No