

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

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RSA No.5879 of 2014 (O & M)
Date of Decision:05.07.2018

Tek Ram and another

...Appellants

Versus

Sube Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the appellants.

Mr. Raj Kapoor Malik, Advocate
for the respondents No.1 and 3.

ANIL KSHETARPAL, J.(Oral)

Plaintiffs/appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit filed by the plaintiffs for permanent injunction. Bone of contention between the two neighbors is a wall. Plaintiffs claimed that this wall which has been marked in the lay out plan Ex.P-16 as 'AB' to be a common wall.

Both the Courts have examined the evidence available on the file and found that the wall is not common. Plaintiffs have nowhere pleaded that the common wall was constructed in a particular year or at a particular time and both the parties had contributed funds for its construction. It is further not proved on file that the alleged common wall is exactly on the boundary of adjoining properties and half portion of width of the wall is in the land owned by the plaintiffs and remaining half is in the land owned by the defendants. It is also not the case of the plaintiffs that one party

constructed the wall and other party contributed or paid half of the amount later on. Courts below had appointed Local Commissioner, who had also reported about the factual situation.

Learned counsel for the appellants made sincere attempt to persuade the Court to take a different view, however, taking into consideration the concurrent finding of fact which is neither shown to be perverse nor result of any misreading or non-reading of evidence.

This Court in exercise of jurisdiction in the second appeal cannot interfere with the finding of fact arrived at by the Courts.

Learned counsel for the appellants has further submitted that as per Ex.P-5, a previous suit filed by the defendants-respondents was dismissed. Learned counsel has produced photocopy of the plaint of the aforesaid suit. In the aforesaid suit, common wall was not in dispute.

There is no merit in the present appeal.

Hence, regular second appeal is dismissed.

05.07.2018
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(ANIL KSHETARPAL)
JUDGE

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