

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

RSA No.2996 of 2018 (O&M)

Date of Decision: 10.05.2018

Dal Chand

---Appellant

Versus

Yad Ram

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Jangvir S. Hooda, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed this regular second appeal against the judgments of the Courts below whereby the suit filed by the plaintiff has been partly decreed.

The plaintiff had filed a suit for mandatory injunction claiming that he was the exclusive owner in possession of residential house (marked with letters ABCD in the site plan) situated in the abadi deh of village Jebabad Khedi @ Bhood Khedli, Tehsil and District Palwal. It was pleaded that on the eastern side of the house of the plaintiff, there was the residential house of the defendant and a 4 feet wide Gali (marked with letters DFJIH) which was the private property of the plaintiff and with which the defendant had no concern. It was alleged that at point IJ the defendant had made encroachment to the extent of 1'6" x 15 feet. He had also opened a gate at point K in the site plan. He had raised illegal construction of about 2 feet in the street by construction of wall and door.

Mandatory injunction was prayed for directing the defendant to remove the

encroachment.

The case of the defendant was that there was no Gali of the alleged width on the eastern side of the house of the plaintiff. It was denied that the Gali in dispute was the private property of the plaintiff. To the contrary, it was claimed to be the joint property of the plaintiff and the defendant. It was claimed that the said Gali was being used by the defendant since the very inception. Accordingly, it was denied that the defendant had made any encroachment at point IJ or otherwise.

On the basis of evidence, learned Trial Court concluded that there was no dispute between the parties regarding the site plan Ex.P1. The parties had constructed their houses on their respective shares of their ancestral land. The learned Trial Court further held that DW1-Bhoop Singh who was the brother of the defendant and who had sold his share to the defendant, had categorically admitted that the land which came to the share of their father, had 18 feet wide way on the eastern side. There was no common way for the land which came to the share of the father of the plaintiff and a passage was constructed for the same. He admitted that there was no other passage for ingress/outgress of the plaintiff except the passage in question as shown in the site plan Ex.P1. On the basis of this the Trial Court concluded that the disputed passage had been constructed for the exclusive use of the plaintiff as there was no ingress/outgress for the land which came to the share of the plaintiff. Thus, as the disputed passage was the private property of the plaintiff, the defendant had no right to open the door in the same. However the plaintiff had been unable to prove that the defendant had made illegal encroachment at point JI. Accordingly the suit of

the plaintiff was partly decreed to the extent that the gate at point K as

shown in the site plan was directed to be closed by the defendant.

The Learned Lower Appellate Court affirmed the findings of learned Trial Court.

Findings of fact have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

As the appeal has been dismissed on merits, there is no necessity to pass separate order on the application for condonation of delay of 550 days in filing the appeal.

May 10, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No