

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

RSA No. 3500 of 2017(O&M)

Date of decision: 5.10.2018

Mohinder Pal Kaur and anotherAppellants

VERSUS

Daljit SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.S. Nagra, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for mandatory injunction directing the defendants/appellants to remove the brick walls constructed to block the passage shown as ABCD from both sides and blockage of drain marked XY depicted in the site plan attached with the plaint situated towards western side of house of respondent/plaintiff marked as EFGH situated within the lal lakir of village Charheri, Tehsil Chamkaur Sahib, District Rupnagar was decreed by the trial Court vide judgment and decree dated 26.07.2016. The appeal preferred by unsuccessful defendants/appellants did not find favour with the District Judge, Rupnagar.

The respondent/plaintiff has asserted his right to seek removal of brick walls blocking the passage and blockage of drain primarily on the ground that he has purchased the house from Harbant Singh son of

Mohinder Singh vide agreement dated 31.05.2006. Towards western side of his house, there is house of defendants and passage to house of the defendants is towards western side which is 8 ft. wide and main gate, water outlets of their house are towards western side. Towards western side of house of respondent/plaintiff, there is 4.6 ft. wide and 33.6 ft. long passage for house of the plaintiff. Some portion of house of respondent is 1, 1.2 ft. high from the street marked as ABCD and courtyard of his house is of the level of street. The respondent has installed underground pipes to drain out water from his courtyard. The street and drain in question are meant for use by the respondent but the appellants are creating hindrance. They are trying to obstruct flow of rainy water by putting earth, waste material and bricks in the street and drain. They have raised walls at points AD and BC and also blocked the drain marked XY in site plan.

The appellants/defendants contested claim of the respondent, raised certain preliminary objections and denied the material averments raised by the plaintiff.

Counsel for the appellants has submitted that the court in appeal, in penultimate para of the judgment particularly concluding part of para 8 has taken note of admission made by Charanjit Singh –appellant No.2 but Charanjit Singh is of young age, therefore, he is not supposed to know with regard to affairs of his predecessors or any family partition between them, as such the Court has committed a serious error by relying upon admission made by Charanjit Singh. Another submission made by counsel is that the respondent/plaintiff did not adduce any evidence with regard to any such partition when otherwise no title with regard to the

house in question is conferred upon him on the basis of agreement to sell purported to be executed by Sh. Harbant Singh.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

Be that as it may, there cannot be any dispute about the settled position in law that it is not open for the Court in second appeal to re-appreciate the evidence and set aside the judgments merely because another view is possible. Equally settled is that second appeal can be admitted for hearing if findings recorded by the Courts suffer from perversity or raise a question of law for determination.

In the case at hand, the respondent/plaintiff has claimed possession of the suit house on the basis of agreement to sell dated 31.05.2006. The appellants are not the successors in interest of Harbant Singh by whom the said agreement to sell was executed. There cannot be dispute that admission is the best evidence and the same can be taken into consideration in view of the provisions of Section 58 of the Indian Evidence Act, 1872. There is nothing on record suggestive of the fact that Charanjit Singh either retracted from his admission or tried to explain the same.

This apart, there is hardly any dispute between the parties that the respondent/plaintiff is in possession of house adjoining the street and drain. As the respondent is in possession of the house, he has the right to use street for his access to the house and drain to drain out water from his property. On the contrary, even if the appellants/defendants are the co-owners of the property in possession of respondent, they cannot create

obstacle/hindrance in use of the passage and drain by the person in possession on the basis of agreement of sale. That being so, I do not find an error much less perversity in the consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

OCTOBER 5, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no