

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

**RSA No.430 of 2017 (O&M)
Date of Decision:22.10.2018**

Maha Singh

...Appellant

Versus

Ramphul

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parmod Parmar, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, while decreeing the suit filed by the plaintiff for decree of permanent injunction restraining the defendant from damaging the wall and directing the defendant to provide passage to the plaintiff for getting the wall in dispute required.

The learned trial court has found that the wall in dispute is a common wall between two neighbourers namely plaintiff and defendant.

Learned counsel for the appellant submits that even after recording such finding, the court has decreed the suit. He further submits that the plaintiff cannot be declared owner of the wall.

In the present case, the plaintiff has specifically stated in the cross-examination that the wall has been repaired and now there is no dispute between the parties with respect to the wall. Once both the courts below have found that the wall is common between the parties, therefore, the courts ought to have only decreed the suit partly by declaring that the wall in question is common between the parties.

Accordingly, the impugned judgments and decrees passed by

the courts below are modified. Since the judgments and decrees are being modified without issuing notice to the plaintiff, therefore, the plaintiff would be at liberty to move an application for recall of the order, if he feels aggrieved. Pending application(s), if any, shall also stand disposed of, in terms thereof.

22.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No