

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

RSA No.4642 of 2018(O&M)

Date of decision: 27.11.2018

Subhash and others

.....Appellants

VERSUS

Het Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manoj Kaushik, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

CM No.16630-C of 2018

Heard.

Allowed as prayed for.

Additional affidavit in support of application for condonation of delay in re-filing the appeal is taken on record.

Disposed of accordingly.

RSA No.4642 of 2018

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction filed by Subhash and others restraining the defendants/respondents from demolishing wall DE of house of the plaintiffs and raising any construction illegally and forcibly and in case the defendants demolishes the existing wall during pendency of the suit and raise new construction, a decree for mandatory injunction directing the defendants to restore the wall DE in its original condition, was dismissed by the trial Court vide judgment and decree dated 22.12.2015 and unsuccessful plaintiffs/appellants were not

allowed any relief in appeal preferred against judgment and decree passed

by the trial Court. The Court in appeal has noticed that the appellants/plaintiffs have failed to adduce any evidence that they are owners of wall DE or the same has been constructed on land belonging to them. The contention sought to be raised by counsel before Appellate Court that the wall in question is joint wall of plaintiffs and defendants was rejected being beyond pleadings.

Counsel for the appellants has failed to point out any pleadings much less evidence to show that the appellants have claimed the disputed wall to be of their ownership. On the contrary, a local commission was appointed by the Court on an application submitted by the appellants/plaintiffs and he submitted his report Ex.P2. The appellants did not file any objection against report of the local commission meaning thereby that they accepted correctness thereof. Both the Courts have rightly relied upon report of the local commission in order to negate plea of the appellants/plaintiffs with regard to their entitlement to seek injunction against demolition of wall DE pertaining to house of the defendants which they want to re-construct after demolishing the same because of the construction being old one. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts that would call for intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been dismissed on merits, applications for condonation of delay in re-filing and filing the appeal are of academic relevance only.

NOVEMBER 27, 2018

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no