

RSA No.557 of 2017

Manoj Kumar
#1# 2018.04.24 10:58
I attest to the accuracy and
integrity of this document

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

RSA No.557 of 2017 (O&M)

Hari Chand

....Appellant

Versus

Krishan and Ors.

....Respondents

Date of Order: 04.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Dahiya, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

CM Nos.1198-99-C of 2017

For the reasons stated in the applications, which are supported by affidavits, the same are allowed. Delay in filing and re-filing the present appeal is condoned.

RSA No.557 of 2017

Plaintiff-appellant is aggrieved of the concurrent findings of facts recorded by both the courts below, whereby his suit for mandatory injunction directing the defendants for removal of the encroachment in the public street has been dismissed vide judgment and decreed dated 14.10.2014 passed by learned Civil Judge (Jr. Division), Panipat which has been upheld by lower Appellate Court vide judgment and decree dated 01.10.2015.

The petitioner-plaintiff instituted the suit alleging, that his residential house marked by letter ABCD shown in red colour, is situated in

the eastern side of the public street marked by letters XYCD. In the month of December, 2010, the defendants raised two pillars and fixed an iron gate in the public street at point A & B in site plan. Plaintiff besides requesting the Sarpanch to take action against the defendants also moved an application before the A.C, Ist Grade, Panipat in this respect but in vain as it was stated that only the Civil Court would have the jurisdiction.

The suit was contested by the defendants by raising objections that there was no public street at point A and B in the site plan and the defendants had purchased the suit property from Ram Singh son of Hari Narayan for Rs.42,500/-.

Both the parties in support of their case led evidence apart from tendering material documents and the trial Court on the basis of evaluation of evidence brought on record by the parties dismissed the suit, and the appeal filed against the same was also dismissed by lower Appellate Court.

Learned counsel for the appellant submitted that the judgments and decrees rendered by both the courts below are illegal and result of misreading of evidence, thus are not sustainable in the eyes of law. The said public street is situated within the abadi-deh and there could be no revenue record of any public street or residential houses. He submitted that the findings have wrongly been returned against the plaintiff once the existence of public street was proved through testimonies of the witnesses as well as the documents Ex.P.3 to Ex.P.5. He has drawn the attention of this Court to the photographs to show that the window of the appellant-plaintiff has been closed therefore the suit has wrongly been dismissed.

After hearing learned counsel for the appellant-plaintiff and perusing the material placed on record, it is apparent that the appellant has

not been able to discharge the onus with regard to encroachment. If there was some encroachment, Local Commissioner could have inspected the premises in this regard and had the violation, if any, been there, the same would have been removed but no such evidence has been led. Moreover, the photographs have been shown for the first time after perusal of which this Court is not enamoured with this effort since it would not be possible to assess the age of these photographs as well as construction especially when the demarcation had not been done or brought on record. In the absence of any demarcation or any cogent and plausible evidence, no case is made out by the appellant to set aside well reasoned judgments and decrees of the courts below.

Dismissed.

April 04, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No