

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6462 of 2017 (O&M)

Date of Decision: October 30, 2018

Fateh Chand @ Fateh Singh

...Appellant

Versus

Smt.Kalawati Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Abhishek Yadav, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.16683-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 214 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6462 of 2017

Appellant-plaintiff was not successful in claiming relief of permanent and mandatory injunction in respect of property bearing house tax No.7056 and 7060 on the premise that defendant No.1 had claimed to be owner in possession of the suit property shown in violet colour in the site plan. In fact, defendant Nos.1 to 3 in collusion with other defendants wanted to extend the projection marked by letters ABCDEF in red colour, therefore, injunction aforementioned was sought.

The suit was contested by denying the site plan. It was stated that the alleged chowk was joint of the parties. Even the counter claim of

claiming as owners in possession of the suit property shown in the blue colour in the site plan attached with the written statement was also sought.

The trial Court, on the basis of the preponderance of the evidence, dismissed the suit and counter claim. Only the plaintiff assailed the findings before the Lower Appellate Court, but was not successful.

The contention before this Court is that the courts below have not been justified in ignoring the documentary evidence on record as it has come on record that the defendants were requested to demolish the stair case and as well as construction raised in the chowk and also not to extend the projection, but the same continued to postponement and ultimately resulted into achieving the purpose.

I have heard the learned counsel for the appellant and appraised the paper book.

The argument aforementioned is not valid in law, for, the plaintiff has miserably failed to discharge the onus as to how he has locus to claim the injunction in the absence of any demarcation report. The judgment Ex.PO dated 05.10.1999 had been relied upon by the courts below, but the fact of the matter is that plaintiff miserably failed to prove that the alleged projection was obstructing the air and light of his house. Plaintiff in cross-examination admitted that no site plan has been sanctioned from the Municipal Committee in respect of the construction raised in House No.7060. The person, who himself has committed violation, cannot seek equity in the manner and mode as indicated above and, thus, the argument of the learned counsel is not able to cut ice to form a different opinion than the one arrived at.

In view of what has been stated above, no ground for

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interference is made out, much less any substantial question of law. Resultantly, the appeal and as well the application seeking condonation of delay in filing the same are dismissed.

October 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No