

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

RSA No.886 of 2017 (O&M)

Date of decision:14.11.2018

Raj Rani

... Appellant

Vs.

Anil Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vivek Khatri, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff has not been successful in seeking mandatory injunction and permanent injunction as consequential relief for removal of construction of bathroom, latrine from Northern side wall of the showroom of plaintiff from point D to B.

It was alleged that plaintiff is owner in possession of show room measuring 36x36 feet, measuring 144 square yards, i.e. 5 marlas comprised in khasra no.219/22 as per sale deed dated 25.04.1997 and bounded as under:-

North : House of defendant

South :Amin Road

East :Show room of plaintiff

West :House of plaintiff.

The construction over the plot was raised. The husband of the

plaintiff met with an accident and remained under treatment in different hospitals and by taking the advantage of the same, defendant constructed the bathroom and latrine on the boundary wall of the plaintiff at point D to B and also raised the height of wall upto 11 feet 6 inches without the consent of the plaintiff.

The defendant opposed the suit and denied the alleged encroachments. Both the parties led extensive evidence. The trial Court dismissed the suit and so did the Lower Appellate Court.

Mr. Vivek Khatri, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in dismissing the suit as the construction raised on the building was as per the sanctioned plan Ex.P18. The trial Court without any rhyme and reasons discarded the evidence. PW3 was not cross examined with regard to specific construction raised by the defendant, therefore, his evidence deemed to have been admitted. The most important aspect with regard to the construction raised by the plaintiff prior to the construction raised by the defendant had gone un-noticed.

I am afraid the aforementioned argument is not sustainable, for, in such matters, the plaintiff was required to bring on record the demarcation report but except the following documents:-

- | | |
|-------|----------------|
| Ex.P1 | sale deed |
| Ex.P2 | site plan |
| Ex.P3 | mutation |
| Ex.P4 | medical report |

- Ex.P5 medical certificate
- Ex.P7 to 14 photographs
- Ex.P15 payment receipt.
- Ex.P17 medical record
- Ex.P18 site plan.”

no other documentary evidence had been placed on record. The plaintiff failed to take the assistance of the revenue expert or local commissioner to establish the encroachments. In this view of the matter, onus as enshrined under Section 101 of Indian Evidence Act, remained un-discharged.

As an upshot of my findings, arguments of Mr. Vivek Khatri, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 14, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No