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

R.S.A No. 994 of 2017 (O&M)

Date of Decision:- 01.11.2018

Surjit Singh

....Appellant

Versus

Tarsem Singh & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Naveen Batra, Advocate, for the appellant.

AMIT RAWAL J. (Oral)

C.M No. 2258-C of 2017

For the reasons mentioned in the application, delay of 24 days in re-filing the present appeal is condoned.

C.M stands disposed of.

RSA No. 994 of 2017

Appellant-plaintiff has not been successful in claiming injunction against the private defendant Nos. 1 to 3 from obstructing of free flow of dirty water as per description given in the plaint. It was alleged that a compromise dated 02.06.1981 was executed between plaintiff and defendant Nos. 1 and 2 whereby 2 karam vide passage and 1 karam vide passage was kept for private use of plaintiff and defendant No.1, which was made for free flow of water but defendant No.1 in connivance with others closed the pucca arch and thus cause of action was accrued to file a suit.

Defendant opposed the suit and denied that there was some pacca water drain and tubewell as alleged by the plaintiff. It was stated that no dirty water of the house of plaintiff fell in the property of defendant Nos. 4

to 6. The family settlement dated 19.08.1977 and 15.02.1999 was also set up between plaintiff and defendant No.1.

Both the parties brought on record numerous documentary evidence. Trial Court dismissed the suit and the appeal preferred before the lower appellate Court was also dismissed.

Mr. Naveen Batra, learned counsel appearing for the appellant submitted that the Court below had not taken into consideration report of the Local Commissioner Ex.PD in correct perspective. Ex. P1 to P4, Ex.PA to PC, PX, PY and PZ showed that there was a water drain and defendants had agreed not to cause any hinderence or impediment. In fact plaintiff was given a chance for optimum and uninterrupted utilisation of the same. The Courts below have also misinterpreted the contents of the affidavit.

I have heard the learned counsel for the appellant and of the view that the aforementioned argument is not sustainable as Local Commissioner had not supported the case of the plaintiff. In such type of cases where the injuction has been sought for restraining the defendants not to obstruct, it is the factual aspect which was required to be brought on record before the Courts below. Plaintiff has failed to discharge the onus. No official of the Village Gram Panchayat has been examined except Lambardar. Courts below have rightly rejected the injunction. The views expressed do not require any interference. There is no illegality and perversity in the impugned judgments and orders passed by the Courts below.

Resultantly, the appeal is dismissed.

November 01, 2018
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(AMIT RAWAL)
JUDGE

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