

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

-.-

RSA 4168 of 2019 (O&M)
Date of decision: 09.09.2019

Gurdial Kaur

.....*Appellant*

Versus

Sunita and another

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sandeep Verma, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against the judgment and decree dated 23.05.2019 passed by the appellate Court whereby appeal preferred by the respondents/defendants against judgment and decree dated 31.08.2016 passed by the Civil Judge (Junior Division), Nabha (hereinafter referred to as 'the trial Court') has been partly allowed , judgment and decree impugned was set aside to the extent the trial Court has directed removal of wall existing in the disputed chowk.

Counsel for the appellant, in response to a query, would inform that the trial Court recorded findings with regard to disputed wall having been raised during pendency of the suit by relying upon technical report Ex.D1, produced by Shri Satish Gupta, Chartered Engineer (DW1) examined by the respondents/defendants. He would further inform that as per report of the Chartered Engineer, bricks used in the wall were new vis-a-

vis bricks used in other construction existing at the chowk.

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the Courts.

The appellant/plaintiff filed suit for permanent injunction restraining respondents/defendants from interfering and obstructing ingress and outgress from street shown in yellow colour and common chowk shown in red colour leading to house of the plaintiff shown in the site plan Annexure A-1, situated in Thatherian Street, Nabha. She also prayed for restraining the respondents/defendants from encroaching common chowk in any manner.

The suit filed by the appellant was decreed by the trial Court but the trial Court also directed the respondents/defendants to demolish the wall erected in the common chowk during pendency of suit. The suit was instituted on 07.03.2013 and decided on 31.08.2016. The appellant/plaintiff failed to adduce any evidence to establish that during pendency of the suit, the respondents/defendants have tampered with the alleged common chowk or raised construction of wall in the chowk, therefore, she is entitle to seek status quo ante in view of the position existing at the time of institution of the suit.

Counsel for the appellant has failed to point out any such fact elicited in cross examination of DW1 with regard to age of disputed wall to support findings of the trial Court that wall was constructed subsequent to institution of suit in March 2013. The mere fact that bricks used for construction of wall appeared to be new vis-a-vis bricks of other construction existing around the chowk, in my considered opinion, cannot

form the basis to hold that wall in question was raised by the

respondents/defendants during pendency of the suit. In this view of the matter, I do not find an error much less perversity in the judgment passed by the Court in appeal whereby the impugned judgment and decree was modified to the extent of rejecting contention of the appellant with regard to demolition of wall existing in the chowk.

In view of what has been discussed herein-before, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

09.09.2019
Mohan Bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No