

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

110

RSA No.5024 of 2012 (O&M)

Date of decision: 20.03.2019

Ramotar and another

..... Appellants

Versus

Ami Lal and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Ajay Jain, Advocate  
for the appellants.

Mr. S.K. Yadav, Advocate  
for respondents No.3 and 4.

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**ANIL KSHETARPAL, J. (ORAL)**

Plaintiffs-appellants are in the regular second appeal against the judgments passed by the Courts below.

Without going into merits of the case, at the outset, it must be noticed that the manner in which first appeal has been disposed of is not in accordance with Section 96 of the Code of Civil Procedure. Learned First Appellate Court has referred to the method through which encroachment is to be proved and thereafter, found that the demarcation report is not reliable. From Para 11 to 14, First Appellate Court only discusses what various witnesses examined by the plaintiff have stated. In para 15, the Court noticed that what is the statement of Basant Lal and the concluding part of the judgment is in para 16 which is extracted as under:-

*“As the plaintiffs failed to prove the fact that the defendants have encroached upon any part of the passage and therefore, they are*

*not entitled to get injunction. The defendants have every right to take electric connection as per law and the plaintiffs have got no concern with the electric connection of the defendants.”*

In the considered view of this Court, the First Appellate Court being last Court of fact and law is required to re-appreciate the evidence, analyze the reasons given by the trial Court, deal with the respective contentions of learned counsel for the parties and thereafter, give its own reasons to agree or disagree with the trial Court. It will be ideal if the First Appellate Court culls out the point which require determination. The present case miserably falls short of the aforesaid requirement.

Without commenting upon the merits of the case, the present appeal is disposed of.

Learned First Appellate Court is requested to re-decide the appeal without being influenced by the judgment impugned herein.

Parties through their counsel are directed to appear before the First Appellate Court on 12.04.2019.

**20.03.2019**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No