

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

RSA No.4342 of 2016 (O&M)

Date of decision:16.05.2019

Narinderjit Kaur and others

... Appellants

Vs.

Goverdhan Dass (since deceased) through LRs

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.S.Nigha, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of fact and law whereby in a suit for injunction filed by the plaintiff being injuncted from encroaching and raising the construction upon 6 1/2” of the wall in question i.e. ½ share of the common wall of 13”.

It was alleged that vide sale deed dated 8.1.1975 having specific dimensions and description, the plaintiffs were owners of the suit property. There existed a common wall between the property of the plaintiff and defendants. The plaintiff had been in possession of the suit property since 1976 and raised the construction upto second floor. The existence of the common wall reflected in the sale deed. There was no objection by the predecessor (Dalbir Singh) of the defendants but after his demise, intention of the defendants became malafide and raised the dispute qua construction

on the first floor and threatened to create holes in the wall of the plaintiff. Despite repeated requests, they openly proclaimed that the entire wall was in their ownership, therefore, necessity arose to file the suit.

The appellant-defendants contested the suit and denied the right, title and interest of the plaintiff and alleged that it was exclusive wall of the defendants.

The plaintiff in support of the aforementioned pleadings examined three witnesses and brought on record the documents whereas defendants examined one witness and brought on record various documents.

Mr. D.S.Nigha, learned counsel appearing on behalf of the appellant-defendants submitted that description in the sale deed was not correct. The report of Local Commissioner cannot be looked into as the inspection was in the absence of appellants and even he did not enter into premises.

I am afraid the aforementioned argument is not sustainable, for, PW1-Rakesh Kumar son of the plaintiff admitted the sale deed dated 08.01.1975 registered document giving the description of the wall. From the perusal of the two site plans brought on record, it is revealed that width of the wall is 13 ½” and in another site plan, it is 13”. The death of common ancestor is not in dispute as well as construction of the premise upto second floor by the plaintiff. Defendant no.1 admitted that her husband had played a role of Mediator at the time when plaintiff purchased the suit property. If it is so, existence of common wall cannot be denied as the defendants did not place on record any material, therefore, the injunction granted cannot be

said against the record and pleadings.

As an upshot of my findings, arguments of Mr. Nigha, 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
May 16, 2019 savita	
Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No