

RSA-4708-2016 (O&M)

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

**RSA-4708-2016 (O&M)
Date of decision : 08.04.2019**

Amar Nath (deceased) through LRs

... Appellant

Versus

Kiran Bhatia and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shiv Kumar, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful before the Courts below in claiming the mandatory injunction directing the defendants to remove the wall marked by letters A to C as well as with consequential relief of temporary and perpetual injunction, restraining the defendants to dig out ditches and patches in the toilet and bathroom of the plaintiff.

The plaintiff asserted that by virtue of the judgment and decree dated 05.06.1982 rendered in Civil Suit No.957 of 1982, became the owner of the property, shown in blue colour in the site plan, attached and Jaman Lal, his real brother, became the owner of the land shown in red colour. The plaintiff as per the family settlement was entitled to for passage of 5'10" wide, but at the site, the passage became narrow. The defendants encroached 1'6" passage of the plaintiff and therefore, the aforesaid suit was filed. The defendants under the garb of the shrinkage of possession also

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wanted to demolish the water tank of the plaintiff existing on the room marked by letters CDEF.

Defendant Nos.1 and 2 opposed the suit and claimed that they purchased the front portion of the said house, from defendant No.3. The plaintiff did not avail the remedy qua the previous decree within a period of three years, therefore, the suit was barred by law of limitation.

Defendant No.3 filed the separate written statement and stated that the house was divided after the decree and there was no structural change.

The plaintiff in support of the pleadings examined five witnesses and brought on record Ex.P1 to Ex.P8, whereas the defendants examined one witness and brought on record Ex.D1 and Ex.D2. .

Learned counsel for the appellant-plaintiff submitted that as per the site plan, which has been proved on record, there was encroachment of 1'6". The Courts below ought to have decreed the suit. The ownership was not in dispute. The defendants' sale deed is of a later date and under the garb of the sale deed, cannot be permitted to cause hindrance in the outgress and ingress.

I am afraid the aforementioned argument is not sustainable as in the cases of encroachment, the suit cannot be decreed, simply on the basis of the site plan, alleging encroachment. There has to be demarcation proving the ownership of the area, owned by the plaintiff and encroachment. In the absence of the same, the plaintiff cannot succeed on surmises and conjectures. This is what has been noticed by the Courts below.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Shiv Kumar, to form a different opinion than the one

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already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

08.04.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**