

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

RSA No.4934 of 2016 (O&M)

Date of decision:14.01.2019

Bhom Singh

... Appellant

Vs.

Karambir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kulvir Narwal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of facts and law, whereby, suit of the appellant-plaintiff simpliciter for injunction against the respondent-defendants for encroachment of the public street bearing killa no.83/2, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff instituted the suit on the premise that way back in the year 1955, his father encroached the part of the street but the defendants changed the straight line of the street by encroachment. In this regard, an application was moved before the trial Court for demarcation but the same was dismissed.

The plaintiff in support of the pleadings examined K.L.Kapoor, Registrar as PW1 and himself as PW2 and brought on record documents Ex.P1 and Ex.P4, whereas, the defendants examined two witnesses and

brought on record Ex.D1 to Ex.D4.

Mr. Kulvir Narwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below abdicated, particularly the Lower Appellate Court in not noticing the fact that encroachment has been proved through the order, Ex.P5 passed in the proceedings initiated under Section 7 of [The Punjab Village Common Lands \(Regulation\) Act, 1961](#) at the instance of third party regarding encroachment against the defendants and in pursuance to the aforementioned report, demarcation report, Ex.P6 established the encroachment. In such circumstances, the Court below should not have declined the injunction simply on the premise that there was some encroachment by the plaintiff by relegating the appellant to some other remedy. Before the Lower Appellate Court, an application under Order 41 Rule 27 CPC was filed but the same has erroneously been dismissed.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record of both the Courts below and of the view of that there is no force and merit in the submissions of Mr. Narwal.

Aks-sijra, Mark A has not been proved on record to establish the possession whereas, Ex.P1 brought on record on behalf of the plaintiff did not prove any encroachment. No doubt, proceedings in other suit are admissible in evidence but on minute examination of demarcation report, Ex.P6, it referred to Ashok Kumar son of Ram Kumar. It is not established that who had been in actual physical possession or encroacher. A person who seeks equity must do equity. If at all, there was some encroachment on

behalf of the appellant, he should have removed the same and sought the injunction. In the absence of the same, the Courts below had no other option but to dismiss the suit.

No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 14, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No