

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

**RSA No.5425 of 2016 (O&M)
Date of Decision.06.03.2019**

Krishan

...Appellant

Vs

Pardeep and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kartar Singh Malik, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the respondents-plaintiffs for injunction against the defendants has been decreed and affirmed in appeal by the lower Appellate Court.

The respondents-plaintiffs sought permanent injunction and mandatory injunction claiming to be owners in possession of the plot described in the plaint, which was allotted to their ancestors. It was alleged that defendants started constructing their house and in this process, defendants encroached upon the street shown in the red colour, which was illegal as they had no right. Despite repeated requests, defendants did not desist and thus, constrained to file the suit.

Defendants opposed the suit and stated that they had already constructed the house on their plot and only final work of construction was going on and denied encroachment upon the portion of the street as alleged. It was gali upto the plot of the defendants and ancestors had already marked the areas and never left the gali from

their plot upto the last edge i.e. plot of others.

Plaintiffs in support of their case examined three witnesses and brought on record site plan whereas defendants examined Krishan, defendant No.1 as DW1 and tendered affidavit Ex.D1/A.

Mr. Malik, learned counsel appearing on behalf of the appellant-defendant No.1 submitted that suit against the co-sharer in the absence of other co-sharers for injunction was not maintainable and the remedy was partition. The finding regarding partition is neither here nor there as only one line in the cross-examination has been read, which cannot be a ground for granting injunction. The local commissioner report is not in accordance with the site plan of the plaintiff, thus, the onus as per Section 101 of the Indian Evidence Act remained undischarged.

I am afraid aforementioned arguments of Mr. Malik are not sustainable, as the defendant in the cross-examination admitted that their ancestors had already kept the gali, in the share of their personal use i.e. for the ingress and egress and its construction was done in 2000. The tenor and mode of the cross-examination of the plaintiffs' witnesses established that partition had already taken place. It was also admitted that six feet gali with the consent of all the ancestors to be kept open. In these circumstances, defendants did not have any right to encroach upon the gali and rightly so have been injuncted.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts

below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 06, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No