

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

**RSA No.6055 of 2015 (O&M)
Date of decision:14.05.2019**

Suresh Kumar

... Appellant

Vs.

Virender Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Gupta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in seeking injunction against the respondent-defendant from interrupting the water flow and as well as removal of obstruction/encroachment in the gali, i.e. BC and KJ.

It was alleged that water of plaintiff's house used to pass through seven feet wide gali shown by yellow colour marked by letters BLKJHG towards South side for the last 45 years and toward East and North side of the gali marked by letters ABEF and BCDE, the house of defendant was situated. The defendant on 14.08.2004 with the help of unscrupulous persons erected the wall on point BC and KJ and complaint in this regard was made to the Station House Officer.

The defendant opposed the suit and denied the allegations/averments made in the plaint and as well as ownership and possession of the suit property, much less alleged encroachment. The

factum of the water flow of the plaintiff's house through alleged gali towards South side for the last 45 years was also denied.

The plaintiff in support of the aforementioned pleadings examined PW1-Pawan Kumar, Draftsman who prepared the site plan, PW2-Suresh Kumar, PW3-Gurdayal, PW4-Yash Pal, PW5-Basant Kumar, PW6-Mahadev Prasad, Building Inspector, MC, Narnaul, PW7-Naval Kishore, PW8-Pawan Kumar Verma, PW9-Mahesh Kumar, PW10-Surender Kumar, PW11-Naresh Chand and PW12-Lal Chand and brought on record Ex.P1 to Ex.P36, revenue record, site plan, photographs, valuation and sale deeds. On the other hand, defendant examined three witnesses and brought on record Ex.D1 valuation form pertaining to the suit property and Ex.D2 valuation form in respect of other property.

Mr. Munish Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have non-suited the plaintiff in declining the injunction by ignoring the copy of the notice and obstruction of the gali. The sale deeds of the defendant also proved the existence of the gali. The draftsman had been categorical with regard to the alleged encroachment and therefore, there is no contrary evidence.

I am afraid the aforementioned arguments are not sustainable, for, appellant-plaintiff has miserably failed to prove on record the encroachment or the blockage by way of the demarcation report. Neither any witness from the department of Municipal Committee has been examined to prove the genesis of the alleged notice which must have been preceded by some inspection. In such circumstances, the onus under Section

101 of the Indian Evidence Act remained un-discharged and therefore, dismissal of the suit was inevitable.

As an upshot of my findings, arguments of Mr. Munish Gupta, 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 14, 2019
savita

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