

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

RSA No.2872 of 2016 (O&M)

Date of decision : 30.01.2019

Jai Bhagwan (deceased) through his LRs

...Appellant(s)

Versus

Punnu Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Mehndiratta, Advocate for the appellant(s).

Mr. R.S. Sangwan, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

A small dispute has travelled up to this Court.

Disputed gallery is 4 feet wide situated in Valmiki Nagar, Charkhi Dadri. Ancestors of the parties to the litigation were joint owners of the entire plot. There was division according to which the plaintiffs who are successors-in-interest of Fakir Chand, got portion on the back side with a gallery/path of 4 feet exclusively for reaching to their residential portion whereas remaining front of the plot fell to the share of defendants.

The plaintiffs filed the present suit for permanent injunction restraining the defendants from interfering in their peaceful possession and restraining the defendants from opening any gate, door or window at point DC.

Learned trial Court, on appreciation of the evidence, decreed the suit whereas First Appellate Court has reversed the same.

Learned First Appellate Court has recorded a finding on the

ground that water pipeline and sewerage pipeline of the plaintiffs are going through the land under the gallery and since original property belongs to the ancestors of the parties namely Fakir Chand and Singh Ram, who were real brothers, therefore such property is joint.

In the considered view of this Court, the finding of the First Appellate Court is contradictory. On the one hand, it is undisputed that portion depicted by words GFEDC fell to the share of defendants. On the other hand, gallery which is 4 feet wide has been held to be joint. It is not the finding of the First Appellate Court that the defendants were also having their water pipeline or sewerage through this gallery. A look at the layout plan, it is apparent that except 4 feet i.e. the width of the gallery, remaining entire frontage is in possession of the defendants. They have a separate gate from the main street. Once that is the position, the First Appellate Court clearly erred in permitting the defendants to open their windows in the gallery in question.

Keeping in view the aforesaid facts, the judgment of the First Appellate Court is reversed and that of the trial Court is restored. The property under the gallery is in exclusive ownership of the plaintiffs.

In view of the above, the present Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

30.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No