

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3318 of 2017 (O&M)
Date of Decision: January 30, 2019

Hari Lal

...Appellant

Versus

Shiv Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Abhishek Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.8064-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 27 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.3318 of 2017

Appellant-plaintiff has not been successful in claiming permanent injunction and mandatory injunction against the respondent-defendants from forcible interference and removal of the encroachment shown in the site plan brought on record.

It was alleged that there was a common street of 11' wide in front of the house of the plaintiffs and the defendants, out of which 8' wide rasta was shown in green colour and the remaining 3' was encroached by the defendants. Despite repeated requests, the defendants did not remove the encroachment and, therefore, cause of action accrued to file the suit.

The defendants opposed the suit and denied alleged encroachment. It was stated that defendant No.2 has constructed the house

after breaking his old house.

Plaintiffs, in support of the evidence, examined PW-1 Satya Parkash Mittal, Draftsman, PW-2 Jai Parkash Numberdar and plaintiff No.3 himself appeared as PW-3 and also brought on record site plan, Aks-shijra and jamabandi. On the other hand, the defendants examined two witnesses and also brought on record sale deeds Ex.D1 to Ex.D3 and jamabandi for the year 2006-07 (Ex.D4).

Mr. Abhishek Sharma, learned counsel for the appellant submitted that the aforementioned documents coupled with the statement of Satya Parkash Mittal PW-1 established the encroachment. Defendants have not been able to belie the same as copies of the sale deeds did not establish the width of the street.

I am afraid, the aforementioned argument is not sustainable as the Aks-shijra shown to this Court during the course of hearing, did not establish the width of the street. The best evidence which could have helped the courts below in adjudication of the lis or favoured the appellant was the demarcation. No such evidence has been led. The oral evidence in the absence of the documentary evidence, as noticed above, would pale into insignificance.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

January 30, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No