

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

**RSA No.5233 of 2017 (O&M)
Date of Decision.23.05.2019**

Mohinder Singh and another

...Appellants

Vs

Sewak Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.M. Munjal, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs have not been successful in defending appeal preferred by the defendants against the judgment and decree dated 17.08.2015 whereby their suit for declaration to be owners of the wall A to B measuring 55 feet and owners in possession of the land ABCD as shown in red colour in the site plan ABOP, though decreed by the trial Court, has been dismissed by the lower Appellate Court.

The appellants-plaintiffs sought aforementioned relief on the premise that the wall was owned by the plaintiffs and existed only after partition between the plaintiffs and defendants. It was 9 inch wall constructed at the expense of the plaintiffs. Plaintiffs intended to construct a room after increasing height of the wall. Defendants claimed the wall of their own, therefore, cause of action accrued to file the suit.

Defendants opposed the suit and alleged that the wall was not raised by the plaintiffs and was not their property but of the

defendants.

During course of hearing, both the parties suffered statement before the lower Appellate Court for appointment of the local commissioner and would be bound by the report. Pawan Kumar Sharma was appointed as local commissioner. He submitted his report and as per the report, it was found that wall in dispute did not come within the area of 44 feet of the house of plaintiffs. In such circumstances, declaration and injunction as sought by the plaintiffs could not have been granted and rightly reversed by the lower Appellate Court.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, 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

May 23, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No