

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

**RSA No.6362 of 2017 (O&M)
Date of Decision.27.03.2019**

Om Parkash
Vs
Ram Chander and others

...Appellant
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, 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 suit of the appellant-plaintiff for possession of the land allegedly encroached by the defendants has been dismissed by the trial Court and affirmed in appeal.

The plaintiff alleged that the defendants No.1 and 2 have encroached the land measuring 17 marlas and defendants No.3 to 7 6 marlas, therefore, filed the suit based upon demarcation report.

Defendant No.1 opposed the suit and stated that demarcation was done at their back as they were not associated and denied any encroachment.

In support of pleadings, plaintiff brought on record demarcation report Ex.PW1/A and PW1/B to establish himself to be owner and examined three witnesses. On the other hand, defendants examined one Ram Chander and closed the evidence.

Mr. Arihant Jain, learned counsel appearing on behalf of the appellant submitted that an application for appointment of local commissioner was submitted but the same has erroneously been rejected. A misc. application has been moved before this Court to

place on record application dated 28.04.2016 and the order passed by the lower Appellate Court as Annexures A-1 and A-2. The encroachment is writ large as there is no dispute to the title. The reasoning assigned by the lower Appellate Court being the last court of fact and law is not in accordance with the provisions of Order 41 Rule 31 CPC, thus, urges this Court for setting aside the judgments and decrees under challenge as there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Plaintiff miserably failed to prove the alleged encroachment. Demarcator in cross-examination admitted that no notice was issued to Ram Chander though there were seven defendants and an attempt has been made to fill up the lacuna in the evidence without noticing that valuable right had already accrued in favour of the defendants. In my view, plaintiff miserably failed to discharge onus.

The appeal is also accompanied by an application seeking condonation of delay of 363 days in filing of the appeal on the premise that he was not aware of the decision of the lower Appellate Court.

A litigant must aware of the court proceedings and ought to be diligent in pursuing his cause of justice. In my view, such a lackadaisical and cavalier attitude cannot be taken as a justifiable and plausible ground for condonation of delay.

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees 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 both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

March 27, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No