

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 5271 of 2019 (O&M)
Date of decision: 18.11.2019

Labh Singh and another

...Appellants

V/s.

Daljit Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Ms. Gagandeep Kaur, Advocate for the appellants.

RITU BAHRI, J. (Oral).

CM-14924-C-2019

For the reasons mentioned in the application, the same is allowed and the delay of 8 days in filing the appeal is condoned.

RSA-5271-2019

The appellants/defendants have come up in appeal against the judgment of the trial Court dated 28.08.2017 and that of lower appellate Court dated 29.07.2019 whereby the suit filed by the plaintiff Daljit Singh restraining the present appellants/defendants No. 1 and 2 from demolishing common wall between the house of the plaintiff and defendants No. 1 and 2 as shown in red colour from A point to B point in the site plan, has been decreed.

After hearing learned counsel for the appellants, the present appeal deserves to be dismissed.

After the evidence led by both the parties, both the Courts below have given concurrent finding of fact that common wall between the

house of the plaintiff and defendants No. 1 and 2 is not disputed. Both the parties are claiming that encroachment has been done. The appellants/defendants alleged that house of defendants No. 1 and 2 has been constructed in Khasra Nos. 51, 50/2, 50/1 and part of khasra No. 49 and the wall in question is not a common wall of the plaintiff and defendants No. 1 and 2 and was not constructed 30 years back as alleged by the plaintiff.

The defendants' case is that some area has been encroached upon by the plaintiff forcibly and illegally in the year 2007 and this fact came to light at the time of demarcation.

The plaintiff at the same time pleaded that defendants No. 1 and 2 have encroached some portion of the land. Since the fact with respect to encroachment of the land can only be determined when parties avail appropriate remedy against each other and the construction of wall is not in dispute between the parties, the suit has been rightly decreed restraining the defendants from forcibly demolishing the wall. The question of title of land and wall was not an issue to be decided in a suit for mandatory injunction.

With these observations, appeal is dismissed.

Pending application, if any, also stands dismissed.

(RITU BAHRI)
JUDGE

18.11.2019
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No