

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

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**RSA-5790-2018(O&M)
Date of Order: 16.09.2021**

**VALIATI LAL BHATIA DECEASED
THROUGH HIS LRS**

..Appellant

Versus

HARINDER KAUR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Bali, Advocate
for Mr. Deepak Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

The legal representatives of the defendant assails the correctness of the concurrent findings of the fact arrived at by the Courts below while decreeing the suit for mandatory injunction.

The plaintiff-respondent filed a suit claiming that she had purchased a plot measuring 115 square yards (4 marlas) vide a Sale Deed dated 05.09.2005, from Smt. Santosh Kumari wife of Sh. Piare Lal and two days before filing of the suit the defendant after demolishing the boundary wall, encroached upon some part of her plot.

The defendant contested the suit with the assertion that he has purchased the property vide a Sale Deed dated 26.10.1987, and thereafter, constructed the house.

During the pendency of the suit, two local commissioners were appointed who reported that the defendant has in fact encroached upon some part of the plot of the plaintiff. The Court after comparing layout plans Exhibit P-12 and P-16, found that on Eastern side of the plot of the plaintiff, there is an encroachment by the defendant.

Heard the learned counsel for the appellant.

He contends that the appellant has perfected his title by the adverse possession and there is no evidence to prove that the excess area in possession of the defendant, in fact belongs to the plaintiff.

On a careful reading of the judgments passed by both the Courts, it is evident that the defendant has not set up his case on the plea of adverse possession. The defendant cannot be permitted to take up the plea of adverse possession for the first time in the Regular Second Appeal.

As regards the next argument, it may be noted that both the Courts on preponderance of the evidence found out that the defendant has encroached upon the 13 square yards area of the plaintiff. It is not the case of the defendant that he has encroached upon the plot of someone else. In fact, the defendant while contesting the suit has pleaded that he is in possession of the plot purchased by him. On demarcation, it has been found that the possession of the defendant is in excess of the area than what he purchased.

Hence, no ground to interfere.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 16, 2021

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**(ANIL KSHETARPAL)
JUDGE**

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