

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

RSA No.1766 of 1990

Date of Decision: 25.08.2022

Madan Lal

..... Appellant

versus

Shori Lal

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Pritam Singh Saini, Advocate with
Ms. Vibha Nagar, Advocate
for the appellant.

Mr. Sumit Gujjar, Advocate for
Mr. S. S. Dinarapur, Advocate
for the respondent.

TRIBHUVAN DAHIYA J. (ORAL)

This is the appellant-plaintiff's second appeal in a suit for mandatory injunction with consequential relief of permanent injunction.

2. The appellant-plaintiff (hereinafter referred to 'the plaintiff') filed his suit for mandatory injunction directing the respondent-defendant (hereinafter referred to 'the defendant') to restore original position of the suit property marked A, B, C and D as shown red in the site plan by removing illegal construction raised by him, and to restore the possession thereof to the plaintiff.

3. The Appellate Court has held that the document which can throw light on the plaintiff's case is the site plan. Earlier its photocopy was tendered in evidence as Mark A; it was not exhibited according to law as it was not traceable. During the appeal, the original site plan was produced and was exhibited as Exhibit P-3/A. On comparing the site plan with the site plan placed on record by the defendant, the position and location of the eastern wall (the wall in dispute) of the defendant's

house is the same and no encroachment stands established. This is a finding of fact.

4. The suit was filed only on the basis of the site plan. It has further been held that the plaintiff's house is situated on the eastern side of the wall in dispute, but he filed the suit when the wall had been build up to the roof level after demolishing the old wall. In case any encroachment was being made by the defendant, the suit should have been filed in the beginning at the initial stage. The evidence led could not establish any encroachment on the land by the defendant. Both the Courts have concurrently held thus.

5. No error of law could be pointed out in the findings recorded. Besides, no substantial question of law arises for consideration.

6. Dismissed.

25.08.2022

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**(TRIBHUVAN DAHIYA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No