

**RSA No.1761 of 2019(O&M)
and other connected case**

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

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**RSA No.1761 of 2019(O&M)
Date of decision:22.03.2022**

Sarwan Singh and others

...Appellants

Versus

Gurbachan Singh

...Respondent

RSA No.1755 of 2019

Sarwan Singh and others

...Appellants

Versus

Gurbachan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S.Dhindsa, Advocate, for the appellants.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The defendants while assailing the correctness of the concurrent findings of fact arrived at by the courts below, have filed these two Regular Second Appeals. There is a slight modification of the judgment passed by the First Appellate Court.

Some facts are required to be noticed.

The plaintiff filed a suit for grant of decree of mandatory injunction to remove the encroachment over a public passage which is claimed to be 20 feet wide. The plaintiff is the owner of the house in the aforesaid street and he alleges that the defendants have encroached upon 7

feet x 27 feet of the public street.

The defendants contested the suit while admitting that there is 20 feet wide passage on the Eastern side of the house of the plaintiff, which is being used by the public since 1978. The defendants asserted that there is no encroachment.

Both the courts, on appreciation of the evidence and on examining the admission of DW2-Bakshish Singh, have decreed the suit.

The learned trial Court passed a decree to the extent of 1'9" feet width. The First Appellate Court has decreed the suit in entirety.

It has come in evidence that the defendants purchased a plot measuring 8 marlas only, whereas, he has acquired possession over the plot measuring 10 marlas.

This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the judgments and decrees passed by the courts below.

The learned counsel representing the appellants contends that the official of the municipal committee did not produce the building plan and the Municipal Committee was not impeladed as a party. He further contends that in the case in question, it was incumbent on the Court to get the area demarcated on the spot.

It is not in dispute that the plaintiff and the defendants have their respective houses adjoining each other. It is also evident that there is no dispute with regard to width of the public street. In view of the facts available on the file and the evidence of Bakshish Singh-DW2 (the draftsman produced by the defendants), it is proved that the appellants have

encroached upon the portion of land existing on the Eastern side of their land marked as 'ABCD'. The appellants have failed to prove that the said portion belongs to them or it was constructed legally. It is also not in dispute that the appellants have no other document of title except Ex.D1 (sale deed) which is with respect to a plot measuring 8 marlas.

Keeping in view the aforesaid established facts, the non-production of the building plan by the Municipal Committee does not stop the Court from passing a decree.

The next argument of the learned counsel representing the appellants is with regard to non-impleadment of Municipal Committee as party-respondent.

Once the plaintiff is adversely affected by the encroachment of the public street near his house, then, non impleadment of Municipal Committee would not result in dismissal of the suit for non-joinder of the parties. It may be noted here that the trial court as well as the First Appellate Court have noticed that the learned counsel representing the appellants neither led any evidence nor pressed the aforesaid issue with regard to non-joinder of the Municipal Committee as defendant at the time of arguments.

The last argument of the learned counsel representing the appellants is with regard to failure of the Court to appoint a Local Commissioner.

It may be noted here that the dimensions of the respective plots owned by the plaintiff and defendants, are not in dispute. The width of the street is also not in dispute. Both the courts have examined the draftsman to prove their respective cases.

In view thereof, no ground to interfere is made out.

Dismissed.

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

March 22, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No