

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

RSA-5052-2018 (O&M)

Date of decision:13.12.2022

Jaipal

....Appellant

Versus

Kuldeep Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Rathee, Advocate for the appellants

Mr. Raghav Goel, Advocate for respondent no.1 to 3

ANIL KSHETARPAL, J (Oral)

While assailing the findings of the fact arrived at by the First Appellate Court, defendant no.1 has filed the present appeal. It is not in dispute between the parties that while deciding civil suit no.806 of 1986 '**Virender Singh and others vs. Rai Singh etc.**' the court carved out street no.76. The plaintiff claims that in order to protect the residential area of village from the over flow of water in a pond, the permanent wall on the western edge of street no.76 was constructed whereas defendant no.1 has demolished the said wall and has encroached upon the aforesaid street. The Gram Panchayat despite intimation is not taking any action against the defendant. The defendant while contesting the suit admitted the decree passed in civil suit no.806 of 1986. However, he claims that in a subsequent suit Smt. Chhoti etc. vs. Jumla Malkan, a common passage no.76 was carved out. They claim that no such wall has been constructed. Defendant no.1 claims that he is the owner of the plots no.805-B, 805-C and 805-C. The trial court

dismissed the suit, however, the First Appellate Court, on reappreciation of the evidence, found that the suit filed by the plaintiff deserves to be decreed.

This Court has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned record. It is evident from the deposition of PW4 Naresh, Clerk, who produced the layout plan (Ex.P1) that street no.76 is coming from North and is going towards the Southern direction. It is located towards the eastern side of the pond. The street is in a straight line. The defendant has not led any evidence to prove that his alleged vendor of plot no.805-C was the owner of the property. It has also come in evidence that the Gram Panchayat has laid bricks in order to brick line the street.

Although the learned counsel representing the appellant made sincere attempts, however, failed to draw the attention of the Court to any substantive error or perversity in the judgment of the First Appellate Court. Hence, no ground to interfere is made out.

Dismissed.

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

13.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE