

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

116

**RSA-573-2022 (O&M)
Decided on : 12.07.2023**

Surender

. . .Appellant

Versus

Manoj Kumar and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Dr. Deepak Jindal, Advocate for the appellant.

SANJAY VASHISTH, J. (Oral)

1. Suit for mandatory injunction filed by the appellant (plaintiff) was dismissed by learned Trial Court by giving the observation that out of two reports of local Commissioner, one prepared by the revenue official vide report dated 05.10.2018, is more convincing, whereas the report dated 07.03.2017, prepared by Mr. R. S. Raghav, Advocate is based upon the photographs Ex. P/ B and PW3/ D only.

Relevant paragraph No. 13 of the finding of learned Trial Court
says as under:-

“13. *The only point of adjudication in the present case is whether the defendants have installed the roof of their house over the wall of the plaintiff. In this regard, the report of local commission is of immense importance. Law is also well settled that report of a Commissioner is only a piece of evidence among other evidences adduced to determine the issues involved and the same can be relied upon, if it is not thrashed by other cogent and convincing evidence. It is worthwhile to mention here that there are two local commissions appointed by the court in the present case and in that scenario, the court has to arrive at a conclusion as to which of the reports is more reliable. The first report of local commission dated 7.3.2017 Ex.PW3/J was prepared by PW3 Shri R. S. Raghav, Advocate, who opined that the disputed chajja of the defendants is fixed on the wall of plaintiff. It is also stated in the report that both*

the parties had admitted the site plan SURENDER VS. MANOJ KUMAR AND OTHERS -11- tendered by the plaintiff as correct and the disputed property was identified by both the parties. The local commission also placed photographs Ex. PW3/B to Ex. PW3/I. The second report of local commission dated 5.10.2018 Ex. DW2/B was prepared by DW2 Shri Kamal Kumar, Halqa Girdawar, Gurugram who opined that the defendants have not erected their wall over the wall of the house of the plaintiff. Rather the plaintiff has raised the wall by encroaching three feet of land. The wall of the defendants in the East side is 1½ feet inside the wall of the plaintiff and the same is not installed over the wall of the plaintiff. After the perusal of both the reports, I am of the considered opinion that the local commission report dated 5.10.2018 Ex.DW2/C inspires the confidence of the court as the same is prepared by revenue officer after proper demarcation. The report dated 7.3.2017 Ex. PW3/J was prepared by an Advocate on the basis of photographs Ex. PW3/B to Ex. PW3/I only and no demarcation is conducted by him. Further the photographs Ex. PW3/B and Ex. PW3/D also countenances the report dated 5.10.2018 and shows that the wall of defendants is separate from the wall of plaintiff. The local commission DW2 Kamal Kumar, Halqa Girdawar, Gurugram has stated in his cross examination that owners of C-104 have not encroached upon the wall of owners of C-105. Hence, I am of the considered opinion that the local commission dated 7.3.2017 Ex.PW3/J cannot be relied upon and the defendants have not installed the roof of their house over the wall of the plaintiff. ”

2. Lower Appellate Court, while dealing with the first appeal found one additional ground that plaintiff also failed to prove as to when defendants put their projection (*Chhajja*) on his wall. Even no police report or any kind of complaint was made to any authority at the time when such construction was being raised by the defendants. Therefore, learned Lower Appellate Court has considered the conduct of the plaintiff as unnatural.

3. Even at the time of hearing, on being asked by this Court; Dr. Deepak Jindal, counsel for the appellant, after going through the plaint, could not point out the fact that as to when such construction was raised by

the defendants .Thus, this Court has also found that nothing has been pleaded by the plaintiff in the plaint regarding as to when such construction of *Chhajja* over the wall of the plaintiff was done by the defendants.

4. Otherwise also, neither any illegality has been shown in the judgment passed by the Courts below nor making out of any specific law point is referred by learned counsel for the appellant in support of his arguments. Therefore, finding no infirmity in the impugned judgments, present appeal stands dismissed.

5. Disposed off.

SANJAY VASHISTH)
JUDGE

12.07.2023

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<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>