

2023:PHHC:085710

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

RSA-5180-2012 (O&M)

Date of decision: 06.07.2023

Shiv Charan Gupta through his LRs

..Appellant

Versus

Bhaiya Ram and another

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Navkesh S.Goraya, Advocate for the appellant

Mr. Ajay Ghanghas, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

The plaintiff's suit for grant of decree of mandatory injunction directing the defendant to construct their own wall in between house no.32/20 and 31/20 in the rear portion of the house to put the load of their lintel on their own wall instead of central wall, has been dismissed by both the courts below. It has been held that the plaintiff has failed to prove that the wall which is located on the rear side is either constructed by him or is a common wall. In fact, the plaintiff previously filed civil suit no.200 of 2006. In the aforesaid suit, the plaintiff while filing the layout plan did not depict the wall in question. It was not claimed by the plaintiff that the aforesaid wall has been constructed by him. Moreover, the plaintiff failed to lead any positive evidence to prove that the wall in question was constructed by him. He did not examine either the mason or the contractor. He also did not produce invoices for the construction material purchased by him.

This appeal has been preferred challenging the concurrent findings of fact. Learned counsel representing the appellant contends that the defendants also failed to produce evidence to prove that the wall was constructed by them. He submits that in these circumstances the court should have declared it to be a common wall.

Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook and the requisitioned record.

This Court has considered the submission. It is well settled that the plaintiff has to stand on his own legs. It is the plaintiff who came to the court claiming that the wall in question was constructed by him. However, he failed to lead evidence. Once the plaintiff has failed to prove his case, the suit filed by him is required to be dismissed.

Hence, dismissed.

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

06.07.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE