

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

109

RSA No.2565 of 2018

Date of Decision: 17.10.2023

Gursherjit Singh and another

....Appellants

Versus

Dilbagh Singh and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Gurmeet Singh Saini, Advocate for the appellants.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellants/plaintiffs against the concurrent findings of the dismissal of civil suit.

2. A suit for seeking decree of declaration alongwith consequential relief of permanent injunction restraining the defendants from interfering the peaceful possession of the plaintiffs over the common passage was filed by the plaintiffs.

3. The plea in regard to the injunction for restraining the defendants to interfere in the common passage has been accepted by the learned trial Court, however, plea of mandatory injunction was declined by the Courts below primarily for the reason that plaintiffs have failed to prove that how and when the alleged encroachment was done by the defendants.

4. Learned Trial Court has taken note of the cross-examination of the plaintiff, where he stated that he does not know if the gate is installed in the room shown in red color towards southern

side in the site plan. Further he voluntarily stated that the construction of the room was started by the defendants about one year ago. There is clear admission also by admitting that gate might have been installed, at the time when he was child. The plaintiff failed to prove the date of the construction of the room, its month and year. Thus, plea in regard to the encroachment made by the defendants is uncertain and also without the support of any substantial evidence.

Accordingly, plea of granting mandatory injunction for removing the alleged encroachment at KLMN in red color in the site plan (Ex.P1) has been dismissed.

5. Said finding has also been reiterated by the learned First Appellate Court. Otherwise also, it is a finding of fact confirmed by the two Courts. There is no scope left in the regular second appeal, unless the appellants are able to highlight the illegality or perversity in the findings recorded by both the learned Court below.

No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

October 17, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no