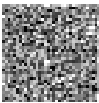


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

2024.PHHC:067218



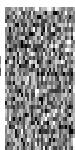
RSA-2312-2011
Date of decision: 14.05.2024

BHAGAT RAM (DECEASED) THROUGH LRS. & ANR. ..Appellants
Versus
SULTAN SINGH @ TONA RAM AND ORS ..Respondents
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwar Abhay Singh, Advocate for the appellants.
Mr. Ram Chander, Advocate for respondents.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing their suit for the grant of mandatory injunction directing the defendants to demolish the drain. The plaintiffs filed the suit claiming that they are residents of village Jhirbhari and they have constructed their house as well as a private drain marked with words ‘RP’, however, the defendants have constructed drain marked with words ‘WXR’ and discharge of water in the private drain. The defendants on the other hand while contesting the suit claimed that there is no drain marked with ‘WXR’ and the plaintiffs have encroached upon the street, which has been marked with letters ‘EFCBGH’ by installing a gate at point ‘EBG’.
2. Upon appreciation of evidence, both the Courts below have held that the plaintiffs have failed to prove their case and the Gram Panchayat was required to be impleaded as party in order to resolve the controversy.
3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.



4. The learned counsel representing the appel 5
to layout plan (Ex.P-1) submits that public drain exist on extreme Southern
portion of the layout plan, which has been connected with the private drain
constructed by the plaintiffs in their own area. He submits that both the
Courts below have erred in dismissing their suit.

5. Per contra, the learned counsel representing the respondents has
submitted that the layout plan (Ex.P-1) has not been accepted by both the
Courts below. He submits that the correct site plan is Ex.D-1, which shows
that the plaintiffs have encroached upon the portion of the street.

6. This Court has considered the submissions of the learned
counsel representing the parties.

7. In substance, the dispute is with respect to complaint of the
plaintiffs to the effect that a public drain has been connected with the private
drain. In such circumstances, Gram Panchayat was necessary party in order
to find the correct facts. Public drain vests in the Gram Panchayat. The
existence of public drain from words ‘UP’ is not disputed. There is a small
portion, which is marked with word ‘WXR’. Whether that drain is a public
or a private drain can only be decided if the Gram Panchayat is party to the
suit.

8. Keeping in view the aforesaid facts, this Court does not find it
appropriate to interfere with the concurrent findings of fact.

9. Dismissed accordingly.

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

May 14th, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No