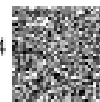


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

2024.PHHC:069074



RSA-522-2021 (O&M)
Date of decision: 16.05.2024

RAKESH

..Appellant

Versus

HANSRAJ AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.R. Yadav, Advocate
for the appellant.

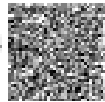
ANIL KSHETARPAL, J(Oral)

CM-2960-C-2021

1. For the reasons stated in the application for condonation of delay which is supported by an affidavit, the application is allowed.
2. The delay of 219 days in refiling the appeal, is condoned.
3. CM stands disposed of.

Main case

4. In this regular second appeal, the plaintiff assails the correctness of judgment passed by the Courts below. The trial Court partly decreed the suit as well as the counter claim filed by the plaintiff and defendants, which in appeal has been modified by the First Appellate Court. In substance, the dispute is with regard to a 5 feet 4 inches wide passage, which is 63 feet long. The learned counsel representing the appellant has produced a copy of the layout plan to depict the factual possession.
5. Originally, the entire plot belongs to Sh. Nand Ram. Subsequently, his two sons were given plots having frontage on the main



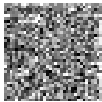
Sh. Rakesh-appellant was given frontage of 16 feet 10 inches. Towards the Eastern side of the plot, a passage has been carved out in order to provide path to Sh. Jagannath and Sh. Hans Raj (two sons of Sh. Nand Ram). The partition of plots, which came to their share have no path except a narrow strip of land. The plaintiff claims that the aforesaid passage is for the usage of everyone. Both the Courts have found that the plaintiff has installed windows and ventilators but no door was installed. Thus, the First Appellate Court has held that windows and ventilators would continue to remain intact and the defendants shall not be entitled to make any construction on the passage.

6. This Bench has heard the learned counsel representing the appellant at length and with their able assistance perused the paperbook.

7. The learned counsel representing the appellant submits that because of the order passed by the First Appellate Court, the appellant is unable to enter the street even for making necessary repairs and white washing.

8. This Court has considered the submissions of the learned counsel representing the appellant.

9. This plea was never taken up before the Courts below. There is a finding of fact arrived at by the Courts below that the appellant has no opening towards the passage, which is on the extreme eastern side of the plot. There is no door installed by the plaintiff towards the passage. From the perusal of layout plan, it is evident that the passage was left for two children of Sh. Nand Ram, who were allotted plots at the back side. Hence, the First



Appellate Court has correctly passed the judgment while appreciating the evidence.

- 10. With these observations, the appeal is dismissed.
- 11. All the pending miscellaneous applications, if any, are also disposed of.

May 16th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No