

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

**Regular Second Appeal No.2139 of 2013 (O&M)
Date of Decision: January 20, 2015.**

Basheshar Nath

.....APPELLANT(s).

VERSUS

State of Haryana and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bipin Sharma, Advocate
for the appellant (s).

Mr. Naveen Sheoran, D.A.G. Haryana.

SURINDER GUPTA, J.

Briefly stated, the case of appellant-plaintiff is that he is carrying on business of chemist in the shop bearing No.1708, Railway Road, Kalka, which was earlier on rent with him and later sold to him in the year 1984. The shop is situated outside the compound of Civil Hospital, Kalka, now known as APHS-CHC, Kalka. The hospital gate was earlier fixed at point CB as shown in the site plan Ex.P5, which they have now removed and installed at point AD as shown in the site plan, in an illegal and forcible manner. They have threatened to raise constriction of wall in order to block the way to the shop of plaintiff from hospital side, illegally and forcibly. The construction of wall, if allowed, shall totally close the passage from the side of Civil Hospital. An attempt was made to raise construction of the wall on 15.07.2008 after installing the gate at point AD resulting in filing the suit for injunction seeking relief to restrain the respondents-defendants from

installing/shifting iron gate of Civil Hospital from point CB to AD and also from raising wall at point CD by the side of the shop of appellant-plaintiff.

On behalf of defendant No.3 i.e. Civil Hospital, Kalka, a preliminary objection was taken that suit has become infructuous as the department had already raised construction of wall of 8 feet height from point C to D and this wall was raised by the Health Department prior to the filing of the suit. There is land of hospital shown as ABCD in site plan (Ex.P5) and the plaintiff has no concern whatsoever with this land of Health Department/Municipal Committee, Kalka. It was further pleaded that the appellant-plaintiff had mischievously opened the side wall of his shop adjacent to the passage of the Civil Hospital and had installed a shutter and window to allure the customers/patients who used to visit Civil Hospital, Kalka. There were many verbal complaints received by the Health Department against the working of plaintiff, who used to call the customers/patients to his shop. The customers of plaintiff also used to park their vehicles in the passage of Civil Hospital, creating obstruction and nuisance in the free ingress and egress to the Civil Hospital. Many times, the Ambulance or other vehicles which used to carry serious patients to Civil Hospital got stranded there waiting for the customers of appellant-plaintiff to remove their vehicles parked in the passage. Many respectable of the area also made complaint against the doctors to the higher authorities that they are hand in glove with the plaintiff and are protecting his illegal activities. In order to protect the property of hospital; in the interest of patients and public at large and to prevent unauthorized parking by the persons residing nearby on the hospital site, the Health Department decided to install the main gate at the entry point of the property of the Civil Hospital and to close all the illegal entries towards its

property. It was further alleged that the passage to the shop of plaintiff is from the side of Railway Road. By shifting the gate at the front of his property and raising wall in its property, Health Authorities have not committed any illegality or breached the right of the appellant-plaintiff.

In the separate written statement, Municipal Committee, Kalka also contested the claim of the appellant-plaintiff with the plea that he had no right to open gate/door of his shop towards the land of the respondents-defendants. The shop, in fact, is situated at Railway Road, Kalka and the appellant is having gate/door of his shop towards Railways Road. Municipal Committee supported the plea raised by the hospital authorities in their written statement. It alleged that Municipal Committee, Kalka conducted the demarcation of the vacant land and found that the vacant land is for the use of Civil Hospital and gave no objection to the shifting of its gate.

Admitting that the wall has been constructed by the Hospital Authorities, plaintiff alleged in the replication that same was constructed after filing of the suit in the night of 17.07.2008 after receiving the summons of this case.

Learned Additional Civil Judge (Senior Division), Panchkula vide judgment dated 09.05.2012 decreed the suit and directed defendants-respondents No.1 to 3 to remove the wall from points C to D and also from shifting the iron gate of the hospital from point AD.

The respondents-defendants filed appeal which was accepted by the Additional District Judge, Panchkula vide judgment and decree dated 08.01.2013 and the suit of the appellant-plaintiff was dismissed. In para 16 and 17 of the judgment, the first Appellate Court observed as follows:-

“16. From the pleadings of

appellant No.4 viz-a-viz testimony of DW1, it is clear that width of passage is 22 ft. and is owned by appellant No.4 and after taking permission, the appellants Nos.1 to 3 raised construction of the wall. Learned Trial Court has felled into error by holding that passage does not belong to hospital authorities. The common passage (sic) owned by respondent and appellant-defendant Nos.1 to 3 raised the construction of wall after permission from appellant-defendant No.4.

The purpose of constructing the wall and shifting of gate is to ensure the smooth entry of the vehicles from railway road. In case, shutters of the shop are not closed then customers standing on the passage creates hindrance not only to hospital vehicles but also the vehicles of the patients, visiting doctors and staff of the hospital.

17. Moreover, in this case, there is conflict of public interest and private interest of the appellant (sic respondent). It is well settled that public interest prevail upon private interests. Moreover, it appears that M.C. i.e. respondent No.4 (sic appellant No.4) had permitted the respondent to open the shutter gates towards passage without realizing its consequences. However, when they came to know that permission granted is creating obstruction then they permitted appellant nos.1 to 3 to raise construction of wall on their land. Moreover, appellant Nos. 1 to 3 raised construction of wall on the land of respondent No.4 and have not encroached upon the area of the shop. Moreover, respondent is having main entry of the road leading to main bazaar and they have no right to use the passage which is basically meant for hospital authorities i.e. appellant nos.1 to 3. Therefore, learned Trial Court has wrongly decided issue nos.1 & 2 in favour of respondent and against the appellants. Though all the material available on record was considered by learned Trial Court but erred on findings which are not sustainable keeping in view the

fact that construction was raised on the M.C. land and not on the land of the respondent.”

I have heard learned counsel for the appellant, learned Deputy Advocate General, Haryana for the respondents and perused the paper book with their assistance.

Learned counsel for the appellant-plaintiff has argued that he was sold the shop in question by the Municipal Committee, where he is carrying on business of chemist. This shop is situated outside the premises of Civil Hospital, Kalka. The opening of the shop is towards Railway Road and on its eastern-northern side, there was vacant Municipal land in front of the Civil Hospital gate. The appellant got the site plan of his shop approved and he was allowed by the Municipal Committee to keep shutter of his shop towards its vacant land shown as ABCD in the site plan Ex.P5. Once the site plan has been approved, the Municipal Committee or the Civil Hospital authorities cannot close the gate of his shop.

The above argument of learned counsel for the appellant carries no weight. It is a case which depicts the greed of the appellant-plaintiff whose shop is on the Railway Road but he wants to keep gate of his shop in the Civil Hospital premises, without permission of the Health Authorities. This argument that in the site plan approved by the Municipal Committee, the gate was allowed to be kept on the eastern-northern side towards the hospital premises, which has been shown to be as Municipal land in the site plan Ex.P5, is without basis. The hospital authorities with consent and permission of Municipal Committee, Kalka have constructed wall in their property, which does not amount to infringing any right of appellant. Though the appellant was well within his rights to keep any opening, aperture, ventilator

or window within the boundaries of his property yet this does not provide him any right to intrude the Government land/hospital property or the property of Municipal Committee. This can be well understood with an example. A person while raising construction of his house, keeps windows and ventilators towards plot of his neighbour, which was lying vacant. By keeping the window or ventilator, he had not intruded the rights of his neighbour but the neighbour has every right to raise construction of wall in his property and block these windows and ventilator. A person who has kept a door towards the property of neighbour cannot use the same for ingress and egress using neighbours property. It was also so observed by Hon'ble Supreme Court in case *Smt. Sanguri and others Vs. Jiwan Dass and another* 1988 AIR (SC) 2024 as follows:-

“7. As far as the question of opening of new windows is concerned, it is open to the defendants to use their property in any manner permitted by law; and hence they cannot be restrained from opening new windows, as no customary right of privacy appears to have been pleaded or proved. This position is not disputed by the plaintiffs. It is, however, equally clear that, if the defendants open any new windows, the plaintiffs are fully entitled to block the same by raising the height of their walls and the defendants are not entitled to break or damage the said walls or any portion thereof so as to remove the obstruction to their new windows.”

Perusal of the site plan Ex.P5 shows that the main gate of the shop of appellant is towards Railway Road. By the side of his property, it is the hospital passage, parking etc. It is only for his lust and to earn by unfair means that the appellant-plaintiff kept the shutter of his property towards the property of hospital. This is another matter that the officials of Municipal

Committee were also party to the mis-conduct and mis-demeanour of the appellant-plaintiff that they sanctioned the site plan without understanding its consequences.

Admittedly, the wall has been raised from point C to D blocking shutter of the appellant and the hospital gate has been shifted point BC to AD. The question which arises for consideration is as to what prejudice, loss or breach of right of appellant-plaintiff has been caused by the act of the respondents. The action of respondents is within the parameters of their authority over the land with which appellant had no concern. The Appellate Court below has rightly observed that when there is a conflict of public interest and private interest, it is former which has to prevail. The appellant, who possessed no right, title or the authority over the property of the respondents on the eastern-northern side of his shop, had no authority to claim a passage or approach from this side.

On perusal of the paper-book and judgment of first Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

January 20, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE