

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

**Regular Second Appeal No.888 of 2016 (O&M)
Date of Decision: March 04, 2016.**

Surinder Singh

.....APPELLANT(s).

VERSUS

Sewa Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

SURINDER GUPTA, J.

Appellant-plaintiff along with proforma respondent No.5 filed suit seeking relief of permanent injunction to restrain the defendants from having an opening or installing a door in the common wall, marked as 'CD' in the site plan (Ex.P1) attached with the plaint.

2. The plea raised by plaintiffs is that the wall marked as 'CD' in the site plan (Ex.P1) is common wall of house of plaintiffs and defendants. The defendants have no opening of any kind in the said common wall towards the house of plaintiffs but were threatening to demolish the wall marked as 'CD' to open gate.

3. Defendants No.1 and 2 contested the claim of plaintiffs, inter-alia, pleading that the wall 'CD' is their exclusive wall. The area in front of the wall 'CD' is street and do not belong to plaintiffs. They asserted their

right to open a door towards this area.

4. The plaintiff failed to prove that the wall 'CD' is common wall. With the observation that a owner has a right to have access to public street from every point, the suit of the plaintiffs was dismissed by learned Additional Civil Judge (Senior Division), Kapurthala.

5. Plaintiff No.1-Surinder Singh filed appeal, which was also dismissed by the first Appellate Court.

6. Not satisfied, plaintiff No.1 Surinder Singh has filed this regular second appeal.

7. I have heard learned counsel for the appellant and have gone through the paper book with his assistance.

8. While the plaintiff failed to prove that the wall in dispute i.e. 'CD' is the common wall, this fact was held as proved by the first Appellate Court that the site in front of wall 'CD' is part of a public street. While reaching the conclusion, it has relied on oral testimony of witnesses i.e. Lamberdar, Ex-Sarpanch, Member Panchayat etc. and also *Panchayatnama* (Ex.D1). This *Panchayatnama* was recorded on 23.04.2008, wherein it was clearly mentioned that the street in front of house of plaintiff vests in Gram Panchayat and has been brick paved by Gram Panchayat. There are two gates of house of plaintiffs towards this street. Jagir Singh, Dalip Singh sons of Hazara Singh also have gates of their house towards this street. Gram Panchayat has also allowed Sewa Singh to open the gate towards this street.

9. Appellant has failed to prove that the disputed wall 'CD' was common wall or that the site in front of wall 'CD' is in his exclusive

exclusive wall of the house of defendants No.1 and 2 and the plaintiffs cannot restrain them from keeping any aperture like window, ventilator, door etc. in their wall. The second aspect of the case is that while opening door in wall 'CD', the plaintiff will have access to the space in front of that wall. That space being part of a street also vests in Gram Panchayat, consequently, the plaintiffs have no locus standi to restrain the defendants from using that part of public street.

10. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

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

12. Dismissed.

March 04, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE