

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

**RSA No. 696 of 2013 (O&M)**

**Date of Decision: 26.11.2018**

Tarlochan Singh

...Appellant

**VERSUS**

Balwinder Singh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Anish Setia, Advocate  
for the appellant.

Mr. Deepak Arora, Advocate  
for Mr. Puneet Sharma, Advocate  
for respondent no. 1.

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**SURINDER GUPTA, J.**

This is regular second appeal filed by plaintiff-appellant-Tarlochan Singh, who sought the relief of permanent injunction to restrain the defendants-respondents from demolishing or causing any damage to any portion of his house shown as red in site plan attached with the plaint.

2. In later part of the judgment, parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Defendant no. 1-Balwinder Singh contested the suit of plaintiff with the plea that there was a street towards south side of the house of plaintiff from east to west side going beyond the property of Nirvair Singh. Another street is towards east of the house of plaintiff from south to north emanating from the street situated on the south upto the house of defendant no. 1. Plaintiff while reconstructing his house encroached upon the streets. A person, who is guilty of encroaching upon public streets, is not entitled to any relief of injunction. The complaint was made to *panchayat*. *Sarpanch*

of the village tried to persuade the plaintiff for removing the encroachment but he did not agree. The matter was then put up before BDPO, who after holding an enquiry into the matter, had come to the conclusion that the plaintiff has encroached upon public streets and recommendation was made to Deputy Commissioner to provide police help for removal of the encroachment.

4. Defendant-respondent no. 2-Gram Panchayat, however, in its separate written statement took a very soft approach and avoided to contest the case of plaintiff.

5. Pleadings of parties led to framing of the issues as follows:-

- (1) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.
- (2) Whether the plaintiff is guilty of misstating the facts? OPD.
- (3) Whether this Court has no jurisdiction to entertain and try the present suit? OPD.
- (4) Whether the site plan attached with the plaint is incorrect, if so its effect? OPD.
- (5) Whether the suit is bad for want of service of notice under Section 80 CPC? OPD-3.
- (6) Whether the suit is not maintainable under the law? OPD-3.
- (7) Relief.

6. Learned trial Court while recording findings on issues no. 1 and 2 took note of the fact that plaintiff had raised construction in the year 2007 and statement of PW-4 in cross-examination that there was street on four

sides of house of plaintiff and observed that the plaintiff had encroached upon the streets and is not entitled to relief of injunction.

6. Learned counsel for the appellant could not come up with any explanation regarding statement of witness of plaintiff, who has stated that there were streets on four sides of the house of plaintiff. Site plan (Ex. P-13) produced on file by the plaintiff shows streets on southern side as well as on western side of house of plaintiff. However, the street on the western side has been blocked by raising wall at point Mark 'A' and similarly the street on the southern side has been partly blocked for approach of users of the street from eastern side by raising wall at point Mark 'B' in site plan (Ex. P-13). From the statement of PW-4-Kuldip Singh, it is evident that portion of the disputed property shown as 'ABCD' was also street, which has been encroached upon by the plaintiff. The finding of the Court below to this effect are based on proper appreciation of evidence. Though reference to the report of BDPO has been made but even if that report is not made basis of the finding recorded by the Court below still from the evidence on record, it is proved that in the year 2007 while raising construction of his house, plaintiff blocked the streets on three sides of his house to make the same as part of his house. A person, who has encroached upon the public property, is not entitled to discretionary relief of injunction. It appears that *gram panchayat* of village Jandir has a soft corner for plaintiff. Instead of protecting the public property, looking after the interest of *gram panchayat* and discharging the duties as custodian of public property, answerable to the public and administration, *sarpanch* of *gram panchayat* has avoided to contest the claim of plaintiff-appellant.

7. Learned counsel for the appellant while relying on observations

of Hon'ble Apex Court in case of **Rame Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by LRs and another, (2004) 1 SCC 769** has argued that even if the appellant is in unauthorized possession of the streets, he cannot be evicted except in due course of law.

8. The above argument of learned counsel for the appellant has no merit as observations in case of **Rame Gowda (supra)** do not relate to encroachment of a public property. Law is well settled that Courts being guardian of the public property have not to come to rescue of an encroacher and to allow him any discretionary relief of injunction to protect his unauthorized possession over public property.

9. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference in this appeal, which has no merit and the same is dismissed.

10. As plaintiff has encroached upon the streets, copy of this order be sent to Deputy Commissioner, Jalandhar with direction to initiate immediate steps to get the encroachment removed and restore the streets.

November 26, 2018

*jk*

( SURINDER GUPTA )  
JUDGE

***Whether speaking/reasoned:***

***Yes/No***

***Whether Reportable:***

***Yes/No***