

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

RSA No.2470 of 2019(O&M)

Date of decision: 26.8.2019

Baldev Kaur

.....Appellant

VERSUS

Harbans Kaur and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Bhupinder Banga, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 06.02.2019 passed by the Additional District Judge, Hoshiarpur whereby appeal preferred by the respondents/defendants was partly allowed and decree passed by the trial Court directing the respondents/defendants to remove the steps, detailed in head-note of the plaint was set aside but decree of permanent injunction restraining the defendants/respondents from raising further construction in the street shown in yellow colour in the site plan was affirmed.

Counsel for the appellant would argue that Tarlok Singh has opened a gate of his house in the street on the eastern side and there is no dispute between the parties in regard to the said gate. He has opened another gate (small in size) in the street in which gate of house of Baldev Kaur opens and said house is on the southern side of the street in which the respondents/defendants have constructed the steps creating hindrance for easy access to the gate of house of Baldev Kaur through the street that joins the main street. It is argued with vehemence that since the steps have

been wrongly and illegally constructed by Tarlok Singh, the trial Court rightly directed the defendants/respondents to remove the steps so that there is no hindrance for the plaintiff to use the street in respect whereof she has left part of her land.

Counsel for the appellant, in response to a query, has fairly informed that there is no evidence on record that steps in question have been constructed by Tarlok Singh either two years before filing the suit or the same were not constructed at the time when Tarlok Singh constructed his house about 25 years ago. Though the street is mentioned to be 4 – 5 feet wide, there is no evidence on record that because of the existence of steps just adjoining small door of house of Tarlok Singh, hindrance has been caused to the appellant in using the street in question for having access to the gate of her house. In the given scenario, I do not find any reason to interfere in the decree passed by the first Appellate Court rejecting claim of the appellant/plaintiff for grant of mandatory injunction.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

AUGUST 26, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no