

**In the High Court of Punjab and Haryana, at Chandigarh**

**Regular Second Appeal No. 2818 of 2018 (O&M)**

**Date of Decision: 10.01.2020**

Randhir Singh and Another

... Appellant(s)

Versus

Shiv Shankar

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal**

Present: Mr. Ashok Paul Batra, Advocate  
for the appellant.

**Anil Kshetarpal, J.**

Defendant/appellants are in regular second appeal against concurrent finding of fact arrived at by the learned Courts below decreeing the suit for permanent injunction and mandatory injunction.

The dispute in the present lis is with respect to a passage. The plaintiff has constructed a house and pleaded that adjoining to his house, there is a passage, which is partly brick paved street upto his house and thereafter, kacha street towards southern side which reaches to Baghora-Ghanaur from the road. During the pendency of the suit, some portion was encroached upon by constructing a brick wall. Accordingly, prayer clause of the plaint was permitted to be amended and relief of mandatory injunction was added. Defendants admitted ownership of the plaintiff with regard to house depicted by words “ADIJ” in the layout plan. However, disputed ownership of the plaintiff with regard to property is covered by “ABCD”.

Both the learned Courts below, on appreciation of evidence, has

found that the plaintiff has successfully proved that the disputed site is a passage and the defendants have wrongly constructed a wall thereon in order to block public passage.

The learned Courts below have relied upon a layout plan produced by the defendants Ex.D1/B, which itself proves the case of the plaintiff.

This Court has heard learned counsel for the appellants at length and with his able assistance, gone through the judgments passed by the learned Courts below.

Learned counsel appearing for the appellants submitted that amendment in the plaint was allowed on 09.12.2015. He submitted that thereafter, neither fresh issues were framed nor any evidence was permitted to be led. He, hence, submitted that relief of mandatory injunction could not be decreed.

This Court has considered the submissions. It is not in dispute that the plaintiff, while filing the suit, had sought relief of permanent injunction restraining the defendants from raising any construction in the street. During the pendency of the suit, some portion of the street was encroached upon by constructing the wall. In these circumstances, application for amendment was moved, which although was not necessary and allowed. Only prayer clause was amended. There was no amendment in the substantive pleadings of the plaintiff. Thus, no fresh issue arose for adjudication. The Court, even in absence of the amendment, has a power to mould the relief.

Once only relief clause was permitted to be amended, there was

no occasion for the learned trial Court to grant fresh opportunity to lead evidence to the appellants.

Learned counsel for the appellants, further, failed to draw attention of this Court to any prayer made by the defendants before the learned trial Court praying for an opportunity to lead further evidence after the amendment of the plaint was allowed.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

**(Anil Kshetarpal)**  
**Judge**

**January 10, 2020**  
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No