

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

RSA-524-2001 (O&M)

Reserved on: 09.05.2023

Date of pronouncement: 17.05.2023

Surinder Kumar and another

...Appellants

Versus

Municipal Council, Bathinda and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashish Grover, Advocate with
Mr. PKS Phoolka, Advocate for the appellants.

Ms. Kavita Arora, Advocate for
Mr. S.C. Pathela, Advocate for the respondents.

H.S. MADAAN, J.

1. In nutshell, facts of the case are that plaintiff Usha Rani and others had brought a suit against defendant Municipal Council Bathinda through its Executive Officer seeking a decree for permanent injunction restraining the defendant from demolishing construction of the shops including verandah forcibly and illegally except in due course of law.

As per case of the plaintiffs, they are owners in possession of the shops bearing municipal No.4753/62, 4753/20, 4753/68 having dimensions 8' x 20" including verandah, for the last more than 15 years; they are paying house tax, electricity charges etc.; the shops

comprise of one room and verandah; the defendant threatened to demolish the construction of the shops illegally and forcibly without issuing any notice to the plaintiffs; feeling aggrieved, the plaintiffs brought the suit in question.

2. On being put to notice, the defendant appeared and filed written statement, contesting the suit raising legal objections that the plaintiffs have not served notice to the defendant under Section 49 of the Punjab Municipal Act. They have not approached the Court with clean hands and no cause of action arose to them to bring the suit. They have concealed material facts also. On merits, the defendant contended that the plaintiffs and other persons were allotted shops having size of 8' x 12" with 8 feet verandah. The verandah was kept open for the entry and use of the customers going to the shops and these are not property of the shopkeepers. The plaintiffs were issued a notice under Section 172 (2) of the Punjab Municipal Act, 1911 on 10.02.1997 since they had started construction of walls in the verandah on that date. The plaintiffs had failed to comply with the notice and brought the suit in question. According to the defendant, the action was taken under law to demolish the illegal construction raised by the plaintiffs. The plaintiffs had refused to accept the notice and the same were pasted on their shops under orders of Executive Officer dated 11.02.1997. The plaintiffs have made construction so as to close the verandah and to stop the customers from use of verandah as passage because there is no

other road or passage except these verandahas according to the sanctioned scheme of Gandhi Ground Market. The defendant, however, admitted that the shops and verandahas were constructed more than 15 years back. Such defendant added that the recent construction made by the plaintiffs was without permission. Defendant prayed for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is owner in possession of the suit property? OPP.
2. Whether the plaintiff has encroached upon the municipal land? OPD.
3. Whether the plaintiff is entitled to injunction as prayed for? OPP.
4. Whether the plaintiff has no locus standi to file the suit? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Relief

4. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Bathinda, vide judgment and decree dated 16.01.1999 dismissed the suit of the plaintiffs.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiffs had preferred an appeal before District Judge, Bathinda, that appeal was assigned to Addl. District Judge, Bathinda, who vide judgment and decree dated 01.02.2001 had

dismissed the appeal.

7. Still feeling aggrieved, the plaintiffs have knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents, who have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. In this case, both the Courts below in the light of pleadings of the parties, by proper and deep analysis of evidence brought on record by them, in view of settled legal position have arrived at a conclusion that the verandah in front of the shops of the plaintiffs which had been left in front of shops was as per DTP scheme which being made part of the shops by raising construction of walls and encroaching upon the passage. Of course the plaintiffs have got no right to do so. They are obviously obstructing the people from going through the verandah by raising illegal construction. Such greed of the plaintiffs to have more covered portion needs to be curbed firmly. The defendant is doing its duty in ensuring that no encroachment is made in the verandahas by the plaintiffs by raising construction so as to make verandaha part of the shops. The defendant is performing its duty and the plaintiffs are raising hue and cry without any reason.

10. Permanent injunction as provided under Section 38 of the Specific relief Act is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances and

no person can claim this relief as a matter of right. For making entitlement to permanent injunction, person approaching the Courts must do so with clean hands, disclosing all the facts. Furthermore, for seeking equitable relief, the plaintiffs must be prepared to do equity which in this case they are not doing. They are out to misuse the process of the Court while seeking approval of the Court with regard to their illegal acts of encroachment and wrongful construction.

11. The judgments passed by the Courts below do not suffer from any illegality or infirmity. No reason is there to upset the impugned judgments in this Regular Second Appeal. With regard to the questions of law framed on 01.11.2012, I conclude that the findings of Courts below on issue No.3 are as per evidence available on record and in accordance with law. There is no contradiction in the verdict given by the Courts below on issues No.2 and 3. Action of defendant is certainly not illegal or wrong but in view of the provisions of Punjab Municipal Act, 1911 to prevent the plaintiffs from encroaching upon the verandah in front of their shops asking them not to raise illegal construction made by them and certainly the appellants are not entitled to get any injunction. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

17.05.2023

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No