

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

**Reserved on 24<sup>th</sup> of October, 2024  
Pronounced on 20<sup>th</sup> of December, 2024**

**CM No.6031-C of 2016 in/and  
RSA No.2303 of 2016 (O&M)**

Jai Bhagwan

....Appellant

Versus

Jai Pal

....Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Jitender Nara, Advocate  
for the applicant/appellant.

Mr. Parveen Kaushik, Advocate  
for the respondent.

**PANKAJ JAIN, J.**

**CM No.6031-C of 2016**

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 1 day in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 1 days in filing the instant appeal is hereby condoned.

**CM No.6032-C of 2016**

This is an application filed under Section 151 of CPC seeking condonation of delay of 413 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 413 days in re-filing the instant appeal is hereby condoned.

**RSA No.2303 of 2016 (O&M)**

Defendant is in appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff filed suit seeking decree of permanent injunction restraining the defendant from interfering in peaceful possession of the plaintiff over the street in dispute and further for restraining the defendant from opening any door in the street, in dispute, and making any kind of encroachment thereupon.

4. Plaintiff claimed that he purchased land measuring 150 Sq. Yards in the colony. The street shown by letters EFGH was left by the vendor for the utilization of plaintiff only. Defendant whose house opens in a *rasta sare-aam* towards the Southern side of his house, wants to open his gate in the street, in front of the house of the plaintiff, which as per his sale deed was for his exclusive possession only and thus, the defendant needs to be restrained by granting decree of injunction.

5. Suit was contested by the defendant, who claimed that the *gali*

in question is a public street. It was made *pucca* by Municipal Committee.

Sewerage system is in existence.

6. Suit filed by the plaintiff was put to trial, framing following issues:

- “1. Whether the plaintiff is owner in possession of the suit house detailed and described in para nos.1 & 2 of the plaint? OPP.
2. Whether the street EFGH shown with red colour in the attached site plan was only left for the use of plaintiff? OPP.
3. If issues nos.1 & 2 stand proved. Whether the plaintiff is entitled for the relief of injunction? OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
5. Whether the suit is not within the limitation? OPD.
6. Whether the plaintiff has been estopped to file the present suit by his own act and conduct? OPD.
7. Whether the civil court has got no jurisdiction to try and entertain the present suit? OPD.
8. Relief.”

7. Defendant in order to prove the nature of street in dispute, examined records from the Municipal Committee and from the Public Health Department to prove that the *gali* in dispute was made *pucca* by Municipal Committee and was being utilized for common sewerage system and thus is a ‘public street’.

8. Trial Court held that merely for the reason that the Municipal Committee has made the street *pucca*, would not make the *gali* in dispute a public street. The suit filed by the plaintiff was decreed.

9. In appeal preferred by the defendant, Lower Appellate Court relying upon the sale deed whereby the plaintiff acquired the plot, in question, affirmed the findings recorded by the Trial Court.

10. Ld. Counsel for the appellant while assailing the impugned judgments & decrees passed by the Courts below relies upon definition of 'public street' as enumerated under Section 2(21) of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the 1973 Act') to submit that once it was proved on record and is admitted case that the *gali*, in question, is being sewered and metalled by the Municipal Committee, the same has to be treated as 'public street'.

11. Ld. Counsel for the respondent is not in position to dispute the fact that as per evidence on record, the *gali* in question is indeed being metalled, repaired and sewered by Municipal Committee.

12. I have heard counsel for the parties and have gone through records of the case.

13. The issue involved in the present *lis* is only w.r.t. nature of the path in front of house of the plaintiff. Plaintiff claims that the same was left exclusively for his user as per the sale deed. On the strength of which, he purchased residential plot measuring 150 Sq. Yards. Defendant claims that since the *gali*, in question, is being repaired and paved by Municipal Committee, the same for all intents & purposes has to be treated as public street. Section 2(21) of the 1973 Act, defines 'public street' as under :

(21) "public street" shall mean any street -

- (i) heretofore levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public funds, unless before such work was carried out, there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor, or
- (ii) which, under the provisions of Section 180, is declared by the committee to be, or under any other provision of this Act becomes, a public street;

14. 'Street' is defined under Section 2(23) of the 1973 Act, which reads as under:

“(23) "street" shall mean any road, footway, square, court, public park alley or passage, accessible, whether permanently or temporarily to the public, and whether a thoroughfare or not; and shall include every vacant space notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such person be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid; and shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, verandah or other erection, up to the boundary of any abutting property not accessible to the public;”

15. It is not in dispute that the land in front of house of the plaintiff is being used as 'street'. It has also come on record that the same is being levelled, paved, metalled, channelled, sewerred and repaired out of municipal funds by the Municipal Committee. There is nothing on record to suggest

that there was any agreement with the proprietor that the street should not thereby become a public street. It is not the case of the plaintiff that the work executed by the Municipal Committee was done without implied or express consent of the plaintiff.

16. In view thereof, this Court finds that the Courts below erred in decreeing the suit filed by the plaintiff holding that mere work by the Municipal Committee out of municipal funds will not alter the nature of the street. The findings recorded by the Courts below being in teeth of the bare provision of law, need to be reversed.

17. As a sequel of the discussion held herein-above, the street in question is held to be a public street. Plaintiff thus cannot maintain suit for permanent injunction restraining defendant from utilizing the same and from opening his gate in the street. Resultantly, the present appeal is allowed. Judgment and decree passed by the Courts below are hereby set aside. Suit filed by the plaintiff is ordered to be dismissed.

18. Pending application(s), if any, shall also stand disposed off.

|                          |                           |   |  |     |  |                      |
|--------------------------|---------------------------|---|--|-----|--|----------------------|
| <b>December 20, 2024</b> |                           |   |  |     |  | <b>(Pankaj Jain)</b> |
| <b>Dpr</b>               |                           |   |  |     |  | <b>Judge</b>         |
|                          | Whether speaking/reasoned | : |  | Yes |  |                      |
|                          | Whether reportable        | : |  | Yes |  |                      |