



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

RSA-3407-1998

Reserved on: 19.09.2025

Pronounced on: 24.09.2025

RAM KISHAN

....Appellant

Versus

PADAM SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

Mr. Anuj Tanwar, Advocate for
Mr. Abhimanyu Singh, Advocate
for the respondents.

Parmod Goyal, J.

The present Regular Second Appeal has been preferred by the appellant/defendant No.1 who is aggrieved by the judgment and decree dated 22.07.1997, passed by learned Additional Civil Judge (Senior Division), Bhiwani and judgment and decree dated 18.05.1998, passed by learned Additional District Judge, Bhiwani, vide which suit preferred by plaintiffs/respondents for permanent injunction was allowed by restraining defendants from making any encroachment on the part of street shown in yellow colour on the site plan attached with the suit. First appeal preferred by appellant, was also dismissed.

2. In their suit for permanent injunction, plaintiffs/respondents had asserted that a public street shown in yellow and red colour in the site plan abuts the plot of plaintiffs and defendants No.1 and 2. The suit property was



stated to be located in the area known as Jituwala Johar, Dinod Road, Bhiwani. That the said public street is being used as such from time immemorial and house of defendant No.1 abuts the street on both sides as shown in the site plan Ex.P1. It was the case of plaintiffs that defendants with *mala fide* intentions are trying to encroach upon some portion of the passage which is shown in red colour with letters ABCD which exist in between the house of defendant No.1 Ram Kishan. That defendants are adamant to block the passage by raising construction and by merging the disputed passage with the property of defendant No.1. Despite repeated requests defendants are insisting to make encroachment and raise construction.

3. On notice defendants No.2 and 3 admitted the disputed portion marked with letters ABCD to be part of public passage, however, denied the fact that they are making any effort to encroach upon public street. Defendant No.1 however, contested the suit by taking number of preliminary objections regarding estoppel by act and conduct, non-joinder of necessary parties, lack of cause of action and non-affixation of *ad valorem* Court fee. On merits it was asserted that the portion covered by letters ABCDEFGH was purchased by defendants vide two different sale deeds dated 21.08.1969 and 07.04.1979. It is asserted that there is a street in the southern direction of house of plaintiffs which leads to kacha road from Village Dinod, Jeetuwala Johr and railway crossing and the gate of house of defendant No.1 also opens in the street. Defendant No.1 claimed portion marked by letters ABCD to be owned by him. Defendant No.1 accordingly prayed for dismissal of suit.



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

1. Whether the suit property is a public passage as alleged if so to what effect? OPP
2. Whether the plaintiffs has no cause of action to file the suit? OPD
3. Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD
4. Whether the suit is bad for non-joinder of parties and mis-joinder of necessary parties? OPD
5. Whether the suit is false, frivolous and vexatious to his knowledge if so what effect? OPD
6. Relief.

5. Both the Courts have concurrently found that portion ABCD claimed to be public street by plaintiffs indeed is a public street and defendants are trying to encroach upon the same. The concurrent finding of fact recorded by learned Courts below is being challenged before this Court. It is worth noticing that both the Courts below have duly noticed that defendants are claiming their right over the suit property on the basis of two sale deeds Ex.DW1/B and DW1/C and are asserting that disputed area being stated as public street is actually owned by them. It has been further noticed by both the Courts below that vide Ex.DW1/B defendants had purchased 16 marlas of land comprised in Muraba No.60, Kila No.19/2 min North situated in Bhiwani Jonpal, bearing sale deed No.406 dated 21.08.1969. While appearing as DW1 Ram Kishan himself admitted that he has first constructed his house on plot purchased by him in the year 1969. He also admitted that gates of his house opens in western side. The western side is nothing but disputed portion. Subsequently, after 10 years vide sale deed Ex.DW1/C dated 07.04.1974 defendant/appellant had purchased 10 marlas



of land comprised in Muraba No.60, Kila No.20/1. Whereupon as per DW1 he has constructed ghair in 1979.

6. Both the Courts have further noticed that from perusal of sale deeds it is clearly made out that plaintiffs had purchased 26 kanal i.e. about 785 per square yards. However, from perusal of site plan Ex.DW1/A over which defendants have claimed i.e. house marked by letters ABCDEFGH total area of which comes to 927 square yards. It was concluded by both the Courts that area under the occupation is much more than area which appellant/defendant is claiming to have purchased vide two sale deeds and accordingly concluded that it is defendant who has encroached upon the public street.

7. In view of the specific finding of facts recorded by both the Courts concurrently based on evidence on record learned counsel for the appellant was asked as to what question of law arises in the facts and circumstances of the present case as in second appeal re-appreciation of facts is not permissible. However, learned counsel for the appellant has failed to raise any question of law arising from the impugned judgments. The learned Courts have also duly noted and considered that in the street leading from north to south, DW4 had admitted existence of pavement of pucca bricks i.e. 'Kharanja' which was stated to be constructed by Municipal Committee along with electricity poles. He also admitted existence of similar Kharanja in the disputed property. Taking factum of excess area in possession of the defendants and existence of Kharanja, both the Courts concurrently found that it is defendants who are trying to encroach upon the public street.

8. Learned counsel for the appellant has failed to show any error



in the concurrent findings of fact recorded by both the Courts. The argument raised on behalf of learned counsel for the appellant that municipal records showing area to be public street has not been adduced, therefore, the land claimed by defendant cannot be held to be street. In my opinion learned Courts below have rightly concluded continuity of Kharanja in the public street leading to area which defendants are claiming to be their personal area, especially when from own documents relied by defendant No.1/appellant it is proved that he is claiming more than area purchased by him by sale deeds in his favour. Evidence of plaintiffs that area is part of public street has gone un rebutted. In the present case, in view of sufficient evidence on record, non-examination of municipal records will have no effect on the conclusion drawn by the Courts below. No question of law arises in the facts and circumstances of the present case. Appeal is without merit, hence dismissed.

24.09.2025
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No