



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

**RSA-2243-2004 (O&M)**

**Reserved on: 18.07.2025**

**Date of Pronouncement:-16.10.2025**

**VED PARKASH PALIWAL AND ANOTHER ... APPELLANTS  
VS.**

**MUNICIPAL COUNCIL PANIPAT, NOW MUNICIPAL  
CORPORATION PANIPAT, THROUGH ITS COMMISSIONER**

**.. RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Ms. Tanu Bedi, Advocate and  
Ms. Arshdeep Kaur, Advocate,  
for the Appellants.

Mr. Jagdish Manchanda, Advocate,  
Mr. N.C. Manchanda, Advocate, and  
Mr. Devyansh Arora, Advocate  
for the respondent.

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**ROHIT KAPOOR, J.**

The present regular second appeal has been filed by the plaintiffs-appellants, against the judgment and decree dated 12.02.2004 passed by the learned Additional District Judge, Panipat, whereby the appeal filed by the defendant-respondent, has been allowed and the judgment and decree dated 30.05.2003 passed by the learned Additional Civil Judge (Senior Division), Panipat has been set aside.

2. The parties shall be hereinafter referred to as per their status before the trial Court, i.e. the appellants shall be referred as 'plaintiffs' and respondent as 'defendant'.

3. Brief facts of the case as set up by the plaintiffs in their plaint, are that they are joint co-sharers in possession of land as described in the plaint,

measuring 70 kanals 07 marlas (*mentioned as 70 bighas 07 biswas, in written submissions and jamabandi on the record*), situated in Bagh Sher Afgan, District Panipat. The plaintiffs and other co-sharers divided the said land into various plots for using the same as per their convenience, for their factories and residences. Some joint land was left by them, which was to be used and is being used exclusively by them and other co-sharers for ingress and outgress to their factories and residences, in the area now known as Paliwal Nagar. It was claimed that on both sides of the joint land, only the residences and factories of the plaintiffs and their co-sharers are in existence, and no other person or general public have the right to pass through or use the said private land, as shown in the attached site plan.

4. It was further claimed that some unsocial and criminal persons started passing through this land/passage unauthorizedly, and as such, there was no other alternative with the plaintiffs except to stop the entry of the unauthorized persons and vehicles, by raising the wall marked as 'AB' on the suit land. However, the defendant Municipal Council, at the instance of influential persons threatened to demolish the wall in question, despite having no right, title or interest in the land. It is claimed that the land in question was neither acquired by the defendant nor ever declared as a public street under Section 180 of the Haryana Municipal Act, 1973 (*hereinafter referred to as 'the Act'*). It was further alleged that despite showing documents of the title of the land, the officials of the defendant were adamant to demolish the wall by force without serving any notice to the plaintiffs, and therefore, they were constrained to approach the trial court by filing the suit in question, praying for permanent injunction against the defendant and for restraining it from demolishing and removing the wall or any other appropriate relief, as warranted in the circumstances.

5. An application under Section 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 was also filed seeking an interim injunction restraining the defendant from demolishing the wall, till the decision of the suit.

6. Upon receipt of notice, the defendant appeared and filed its written statement and reply to the interim injunction application. Besides taking preliminary objections qua maintainability of the suit, the averments made in the plaint were denied and it was claimed that the suit land is a municipal 'street' for the last 40 years and the same is for the inhabitants of the locality and for other passersby and the general public has every right to use the street. It was denied that the plaintiffs are owners in possession of the suit property.

7. It was further alleged that the inhabitants of locality approached the defendant to intervene and demolish the unauthorized wall, which was causing hindrance to the public at large. It was averred that the defendant had issued notice to the plaintiffs under Section 208/181 of the Act, however, the plaintiffs refused to accept the same and the defendant has removed the encroachment in public interest. Reference was made to notification No. 31/1/1995-6-C (I) dated 29.05.1995 to state that at the time of regularization of the colony, all streets, roads, poles, open spaces etc. were declared to have been vested in the defendant-council.

8. The plaintiffs filed replication to the written statement filed by the defendant, denying the averments made therein and reiterating the facts stated in the plaint. It was specifically averred that there used to be a boundary wall at point 'AB' for the last 10 to 15 years, however, some mischievous persons during the past six months, by and by demolished the boundary wall and started trespassing over the passage, necessitating the repair of the old wall. It was claimed that the plaintiffs have every legal right to reconstruct

the wall. It was stated that the defendant demolished the wall in question on 28.01.2002 at about 5.00 PM, although it was served with a notice of the suit on 25.01.2002. It was alleged that the officials of the defendant abused their authority and illegally demolished the wall, during the pendency of the suit, only on account of the fact that they were apprehensive that a stay would have been given by the Court on 29.01.2002, which was the date fixed in the matter.

9. A prayer was made in the replication that since the defendant has demolished the wall marked as 'AB' illegally, therefore, it be ordered to raise the construction of the wall at its own costs or in the alternative, a decree for mandatory injunction be passed in favour of the plaintiffs and against the defendant restraining it permanently from interfering in the right of the plaintiffs to complete construction of the wall and the defendant be restrained from demolishing the same. Records reveal that a separate application for grant of an ad interim injunction was filed by the plaintiffs, wherein a prayer was made for allowing the plaintiffs to raise a wall at points 'AB' and for restraining the defendant from demolishing it till the final decision of the suit.

10. It transpires that although reply to the said interim injunction application was filed and the learned trial Court fixed the same for arguments, no orders thereupon, were passed.

11. From the pleadings of the parties, the following issues were framed on 02.02.2002:-

- “1. *Whether disputed wall marked with letters AB, as shown in the site plan attached with the plaint is part and parcel of land detailed in para one of the plaint and plaintiffs being co-sharers are owners in possession of the same? OPP.*

2. *If issue No.1 is proved in affirmative, whether plaintiffs are entitled to injunction, as prayed ? OPP.*
3. *Whether passage shown in green colour and the disputed wall marked with letters AB is a public street and is being used as such and vests with the defendant ? OPD.*
4. *Whether plaintiffs are estopped from filing the present suit by their own acts and conduct ? OPD.*
5. *Whether civil court has no jurisdiction to entertain and try the present suit? OPD*
6. *Whether plaintiff has not approached this court with clean hands? If so, its effect ? OPD.*
7. *Relief.”*

12. Upon appraisal of the pleadings as well as oral and documentary evidence adduced by the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and issue No. 3 against the defendant, whereas issues No. 4 to 6 were not pressed. Vide judgment and decree dated 30.05.2003, the trial Court decreed the suit and restrained the defendant from demolishing the disputed wall marked as ‘AB’ and further restrained it from putting the disputed passage for the use of public at large, by holding that the same is private property of the plaintiffs and other co-sharers.

13. Aggrieved by the decision of the learned trial Court, the defendant filed appeal No. 31 of 2003, which was allowed vide judgment and decree dated 12.02.2004 by learned Additional District Judge, Panipat, wherein it was held that the plaintiffs were required in the first instance required to seek declaration that the passage in question, which was being blocked belongs to them, and on the basis of such right they could seek the desired relief of injunction. The first Appellate court opined that since the disputed wall in question was not in existence, the relief of injunction for restraining the defendant from demolishing the said wall could not have

been granted. The contention of the learned counsel for the plaintiffs, that

the relief of mandatory injunction should be granted, de hors the fact that the plaintiff had not been amended, was not accepted. It was further held that from the testimony of DW-2 Sh. N.K. Jindal, it was evident that Paliwal Nagar is a part of Mahavir Colony and as per notification dated 29.05.1995, all streets, roads, poles and open spaces stood vested in the defendant. The appeal of the defendant was thus accepted, and the judgement and decree of the trial court was set aside and the suit was dismissed.

14. Aggrieved by the judgment and decree passed by the lower Appellate Court, the plaintiffs have filed the present regular second appeal, which was admitted on 06.05.2005. Substantial questions of law, as enumerated in paragraph 11 of the grounds of appeal, were formulated at the time of admission, which are as under:

- “(a) *Whether in the facts and circumstances of the instant case, the approach of the learned Ist Appellate Court in entertaining and deciding the appeal filed in the absence of the requisite resolution of the Municipal Council to file the appeal is illegal and without jurisdiction?*
- (b) *Whether in the facts and circumstances of the instant case, there being ample evidence on record that the area in question is owned and possessed by the appellant and was only left as a private passage, the assumption of the learned Ist Appellate Court that it is a public street can be sustained in law?*
- (c) *Whether in the facts and circumstances of the instant case the respondent council having failed to lead affirmative evidence in support of its allegation that the passage in question is public street, the suit filed by the appellant could be dismissed?*
- (d) *Whether in the facts and circumstances of the instant case and in view of the facts borne out from the record that it is after filing of the suit the respondent council proceeded to demolish the wall in question, the approach of the learned Ist Appellate Court in not granting the suitable relief to the appellant can be sustained in law?”*

15. Learned counsel appearing on behalf of the plaintiffs at the

outset argues that in terms of Section 16 of the Act 1973, the defendant is a

body corporate and can sue in its corporate name only after a proper resolution is passed for the said purpose. It is contended that since no resolution was passed for filing of appeal by the defendant, before the first appellate court, as is apparent from the records as well as the documents placed on record as additional evidence, therefore, the same could not have been entertained. It is urged that although it has been specifically stated in the present regular second appeal that such objection was taken before the first appellate Court and was erroneously not noticed, still the said pure question of law can be taken at any stage of the proceedings, since it goes to the very root of the matter. Reliance is placed upon the following judgments in support of the argument :-

- “1. ***Bawa Bhagwan Dass Vs. MC Rupar, 1943 SCC Online Lah 36;***
2. ***Municipal Committee Ludhiana Vs. Surinder Kumar, 1974 (1) ILR 420;***
3. ***Municipal Committee Bhatinda Vs. Sadhu Singh, 1987 (1) ILR 174;***
4. **Municipal Committee Karnal Vs. Sh. Mehlo Ram, 1976 SCC Online (P&H) 22, and**
5. **Municipal Council Narnaul Vs. Surinder Kumar and Another, AIR 2005 (P&H) 269.**

16. The next argument raised by the plaintiffs is that in view of the fact, that the documentary and oral evidence of the plaintiffs, remained un rebutted, there was no requirement of filing a declaratory suit. It is contended that the oral as well as documentary evidence, which stood duly proved, leads to an irrefutable conclusion that the plaintiffs were owners in possession of the disputed property/passage in question and it is only after considering the evidence available on record that the learned trial Court had categorically held that the passage is the private property of the plaintiffs and therefore restrained the defendant from putting it to public use. It is further argued that the observation of the learned first appellate court that the

plaintiffs were first required to seek a declaration is based upon incorrect and improper understanding of the well settled law on injunction and declaration. It is submitted that a party can maintain a suit for injunction without resorting to a detailed suit for declaration to prove the ownership if: (i) the plaintiffs clearly establish the title based on proper documents, to which no counter document is brought by the defendant; (ii) necessary pleadings regarding title are there in the plaint; (iii) issues were framed with regard to title; (iv) parties had led evidence on question of title and (v) matter is simple and straightforward. Contention is that all such requirements stood fulfilled and thus there was no necessity of seeking a declaration.

17. Reliance is placed upon several judgements of the Hon'ble Supreme Court, including: (1) *A. Subramanian & Vs. R. Pannerselvam (2021) 3 SCC 675*; (2) *Anathula Sudhakar Vs. P. Buchi Reddy (2008) 4 SCC 594*; (3) *Kayalulla Parambath Moidu Haji Vs. Namboodiyil Vinodan (2022) 20 SCC 310*.

18. The findings of the first Appellate Court that the disputed passage vests with the defendant on account of the notification dated 29.05.1995 (Ex.DW2/A) is assailed by the plaintiffs on the ground that the said notification, which is issued under Section 203A of the Act, does not make any reference whatsoever to Paliwal Nagar. Apart from a bald statement of DW-2, made on the basis of personal knowledge, no document or official record was brought on record to show that Paliwal Nagar was part of Mahavir Colony.

19. It is urged, that to the contrary, the map (Mark-A) shows all the wards in the city of Panipat, and it is clearly depicted therein that Paliwal Nagar is a separate entity from Mahavir Colony. It was argued that the document Mark-A was properly proved and could not have been ignored

while relying upon Ex.DW-2/A. It was further argued that by not bringing the map, which was in the exclusive possession of the defendant, adverse inference was to be drawn against the defendant under Section 114(g) of the Evidence Act, especially after the notices/requests letters as required under Section 66 of the Evidence Act had been sent by the plaintiffs. While making a reference to Section 203A of the Act, it was contended that there is no evidence that the houses of the area were ever subjected to the process mentioned therein.

20. It is submitted that the first Appellate Court has committed glaring errors, which requires intervention under Section 41 of the Punjab Courts Act 1918 as well as under Section 100 of the Code of Civil Procedure, by this Court, though in view of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in *Pankajakshi vs. Chandrika (2016) 6 SCC 157*, formulating substantial question of law is not compulsory. It is contended that the provisions of the Act have not been appreciated by the first Appellate Court while setting aside the judgment of learned trial Court.

21. As regards the findings by the learned first Appellate Court regarding the requirement for amendment of plaint and rejection of prayer for grant of appropriate relief of mandatory injunction, it is argued that the Court fell in error by not appreciating the fact that since the wall was demolished after issuance of notice in the suit in an illegal manner, it was incumbent upon the Court to have moulded the relief to ensure substantive justice.

22. *Per contra*, learned counsel for the defendant has vehemently opposed the submissions made on behalf of the plaintiffs. At the very outset, it is contended that no cause of action survived as the disputed wall already stood demolished and, therefore, the matter has become infructuous. As

regards the question regarding resolution, it was argued that as per Section 35 of the Act, the Executive Officer was authorized for defending the suit. The attention of the Court was drawn to the records, which would show that the pleadings and power of attorney were signed by the Secretary of the defendant. It was also urged that no such objection was taken before the first Appellate Court. Reliance was placed upon the law laid down by the Hon'ble Supreme Court in case of 'Union of India vs. Naresh Kumar and others', AIR 1997 SC 3, to contend that the substantive right should not be allowed to be defeated on account of procedural irregularities or hyper technicalities. It was argued that the suit land is a municipal street for the last 40 years and could not be blocked by the plaintiffs. The defendant had issued proper notices to the plaintiffs under the provisions of the Act and had rightly removed the encroachment in public interest. The attention of the Court is drawn to the notification dated 29.05.1995 (DW2/A) to contend that all roads, streets, parks and open spaces stood vested in the defendant. It is further urged that it was duly proved by DW-2, in his testimony that Paliwal Nagar is part of Mahavir Colony and therefore, the plaintiffs could not claim that the passage in question was a private passage. Reliance is placed upon the judgment of Hon'ble Supreme Court of India in case of 'Municipal Committee, Karnal vs. Nirmala Devi (1996) SCC 63' to contend that every street, which is a 'public street' vests in the municipal committee and the defendant would be well within its powers to remove any encroachment thereupon under the provisions of Section 181 of the Act of 1973.

23. I have heard learned counsel for the parties and have perused the record.

24. Before proceeding further, it is apposite to note that during the pendency of the present regular second appeal, CM-8084-C-2025 was filed

by Municipal Corporation, Panipat for being substituted as the respondent, in view of the fact that in 2010, the defendant was declared as a Corporation. Likewise, CM-9925-C-2017 was filed by the plaintiffs for placing on record documents pertaining to the proposals passed in the meeting of defendant, dated 28.07.2003 and letter dated 14.10.2016, as additional evidence. Both the applications were allowed.

25. After considering the rival contentions, I am of the view that some the most crucial issues have not been decided by the first appellate court. Whether the appeal filed by the defendant could have been entertained without any authorization by way of a proper resolution is one of them. Even if it is to be assumed that this argument was never raised before the appellate court, yet, considering the judgement of the Hon'ble Supreme Court in 'Union of India vs. Naresh Kumar and others' (*supra*), it will have to be determined whether action of the Secretary of the defendant in signing the Appeal, was ratified by the defendant, either expressly or impliedly, or whether it is necessary to examine any competent person as a witness to prove such ratification. The observations of the Hon'ble Supreme Court in para 11 of the aforementioned judgement are extracted as under:

*“The courts below could have held that Shri L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant-Bank must have ratified the action of Shri L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order*

*to ensure that injustice is not done by rejection of a genuine claim.”*

26. Then comes the issue regarding application of mind on the issue of moulding of relief. The first appellate court did not take into consideration that apart from restraining the defendant from demolishing the wall, the trial court had also restrained the defendant from putting the disputed passage to public use. There is no discussion whether, in the peculiar facts and circumstances of the case, especially in view of the undisputed fact that the wall in question was demolished after the notice of the suit and interim injunction had been served upon the defendant, it was necessary to have appropriately moulded relief by granting mandatory injunction against the defendant. The Hon'ble Supreme Court, in the case of

**‘J. Ganapatha and others vs. M/s N. Selvarajalou Chetty Trust, 2025**

**SCC Online SC 633,** observed as under in paragraph 20:-

*“The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion, When moulding the relief, the court considers the issues and circumstances established during the full-fledged trial. looks at shortening the litigation, and then in its perspective, renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course.”*

27. The finding of the first Appellate Court that the plaintiffs should have first taken recourse to seek a declaration, is cryptic and also does not

show application of mind. The said finding could have been returned only

after a proper analysis of the evidence and after consideration of the principles laid down by the Hon'ble Supreme Court in various cases, including the case of Anathula Sudhakar (supra). A word of caution has been sounded out by the Apex Court, that the Court concerned should use its discretion carefully to **identify cases**, where it will enquire into title and the cases which require referring the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. Perusal of the judgement and decree passed by the first appellate court, would reveal, that no such exercise has been done.

28. The finding of the first Appellate Court, that Paliwal Nagar is a part of Mahavir Colony and as per notification dated 29.05.1995 (Ex.DW2/A), all roads, streets, poles etc. stood vested in the defendant, also appears to be conjectural as there is no mention of Paliwal Nagar in the notification in question mere reference to the statement of DW-2 to this effect, which was only based upon personal knowledge, would not be suffice to come to such a conclusion.

29. Apart from the lack of findings and application of mind by the first appellate court on the issues mentioned above, a crucial aspect that this court would have to consider is, that at the time of admitting the present regular second appeal, no interim order staying the judgement and decree of the first appellate court or for maintaining status quo was passed. What is the present status of the disputed street, will have to be ascertained, especially since more than two decades have passed.

In view of the above discussion, the instant regular second appeal is allowed and the judgment and decree of the learned first Appellate Court dated 12.02.2004 is set aside and the matter is remanded back to the first Appellate Court to decide it afresh after considering all aspects of the

matter, keeping in view the principles laid down by the Hon'ble Supreme Court, as mentioned above. The parties are directed to appear before the first appellate court on 12<sup>th</sup>, November, 2025 at 10.00 a.m.

30. The parties will be at liberty to move an appropriate application in accordance with law, for leading additional evidence, if required for the proper adjudication of the case.

**(ROHIT KAPOOR)**  
**JUDGE**

**16.10.2025**

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