

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****111****RSA-4737-2019 (O&M)****Date of decision: 03.02.2025****The Chairman, Amritsar Improvement Trust****...Appellant(s)****Vs.****Manjit Kaur****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kushagra Mahajan, Advocate for the appellant.

*********NIDHI GUPTA, J.****CM-13499-C-2019**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 288 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and the delay of 288 days in refiling the accompanying appeal is condoned.

CM-13500-C-2019

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 203 days in filing the accompanying appeal.

Heard.



For the reasons mentioned in the application, the same is allowed and the delay of 203 days in filing the accompanying appeal is condoned.

RSA-4737-2019 (O&M)

The present second appeal has been filed by the defendant No.1 against the concurrent findings of the learned Courts below, whereby the suit of filed by the respondent/plaintiff for permanent injunction, has been decreed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.1'; and the respondent is the 'plaintiff'.

3. The brief facts of the case as set out in the plaint are that the plaintiff is resident of house no. B-590 Ranjit Avenue, Amritsar. The defendant no.1 had sold the plot no. B 590 to plaintiff vide registered sale deed and possession of said plot was also delivered. As per the boundaries given in the sale deed the said plot is bounded as East 30 ft Road, West 80 Ft. road, **North 30 ft wide road** and South House no.B-589. The plaintiff constructed double story house no.B-590 and also opened the doors, windows and projections towards Northern side where there is 30 ft wide road. The defendant no.1 is bound by the boundaries given in the sale deed. However, the defendants hatched a conspiracy and had started alleging that they will allot the road area. On 14.4.2013 defendant no.2 along with anti social persons and labourers came at the spot and started digging the foundations in the 30 ft wide road. The plaintiff being a lady and



a Punjab Government servant requested them not to dig the foundation and not to block the doors on the Northern side as there is 30 ft. wide road but the defendant no.2-who is very desperate person, alleged that they had got allotted the plot no.591 which was never in existence. The defendants have got no right, title or interest to block the road to dig out the foundation in any manner towards the Northern side of the house of the plaintiff to the extent of 30 ft road which is road connecting main road 80 ft road leading to the Gurdwara from other part of the Ranjit Avenue, Amritsar. But inspite of requests the defendants threatened that they will continue to dig the foundation and also started construction in the 30 ft wide road towards the Northern side of the house of the plaintiff. The plaintiff had got ingress and outgress from the North side and the house of plaintiff has also got windows and ventilators getting fresh air from Northern side and in case defendants succeed in doing so, the plaintiff will suffer an irreparable loss and injury which cannot be compensated in terms of money. Hence the present suit.

4. Upon notice, the defendant no.1 had put in appearance and filed written statement with the preliminary objections that the suit is not maintainable; is barred under Order 7 Rule 11 CPC; the dimensions as mentioned in the plaint are wrong as there is no road on the North side; and on the north side there is plot no.B-591 having area of 97 acres of the defendant no.1; of which plot measuring 100 square yards was allotted to defendant no.2 in a draw which was held on 14.03.2011 etc. It was categorically stated that there was no road on the northern side of the



plaintiff's plot and that the plaintiff had illegally encroached upon the said plot in excess of the allotment made to her.

5. The defendant No.2 also appeared and filed written statement taking his preliminary objections. However, subsequently the defendant No.2 failed to put in appearance and was proceeded against ex parte. Replication was filed where the plaintiff denied the averments made in the written statement and reiterated the facts of the plaint.

6. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled for Permanent Injunction as prayed for? OPP
2. Whether the suit of plaintiff is not legally maintainable? OPD
3. Relief.

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided the issues no. 1 and 2 in favour of the plaintiff and against the defendants; and vide judgment and decree dated 02.02.2016, the learned trial Court decreed the suit of the plaintiff with costs, restraining the defendants from making any construction on the northern side of the house of the plaintiff; and further restrained from interfering into the property of the plaintiff.

8. The said judgment and decree dated 02.02.2016 was challenged by the appellant/defendant No.1 before the learned District Judge, Amritsar, which was dismissed vide judgment and decree dated



17.10.2017 affirming the judgment dated 02.02.2016 of the learned trial Court. Hence, present Second Appeal.

9. Ld. counsel for the appellant assails the concurrent judgments and decrees of the learned courts below by submitting that the learned Courts below failed to appreciate that on the northern side of the plot of the plaintiff bearing number B-590, there is a plot no. B-591 which was allotted to defendant No.2. It is submitted that this is evident from allotment letter (Ex.D3). There is no street or road on the northern side of the plot of the plaintiff. This is evident from the site plans (Ex.D1 and D2). A perusal of the said site plan and lay-out plan clearly shows that on the northern side of the plot B-590 of the plaintiff, there is plot B-591, and there is no road. However, in passing the impugned judgments and decrees, the Id. Courts below have failed to consider the lay out plan which was prepared and sanctioned by the Govt. much prior to passing of the scheme of defendant No.1.

10. It is further submitted that the Id. Courts below have ignored the evidence on record that the boundaries of plot no. B-590 which are mentioned in the sale deed Ex. P1 and agreement Ex. P4, are wrong and actually there is no road on the north side of the plot of the plaintiff. The building plan Ex. P-3 was not got approved by the plaintiff from Amritsar Improvement Trust and as such, reliance cannot be placed on the same.

11. It is contended that it is clear from the above, that the plaintiff has encroached upon the land in excess of what was allotted to her by the



defendant No.1-Trust. Therefore, the judgments and decrees of the learned Courts below are based on false premises, and are liable to be set aside.

12. No other argument is raised on behalf of the appellant.

13. Heard learned counsel for the appellant and perused the case file in great detail.

14. It has been argued by learned counsel for the appellant/defendant No.1 that on the northern side of the plot B-590 of the plaintiff, there is no street or road and the plot B-591 exists there. However, the appellant-Trust itself has admitted in the written statement filed by it before the learned trial Court that the sale deed dated 11.06.1993 (Ex.P1) executed between the parties herein, mentions 30 ft wide road on the northern side of the plaintiff plot B-590. It has been categorically recorded by the learned trial Court in para 9 of the impugned judgment dated 02.02.2016 that the appellant-Trust has admitted the correctness of the sale deed dated 11.06.1993 (Ex.P1). The said para no.9 is reproduced as under:-

“9. Onus to prove this issue was upon the plaintiff and in order to prove the same, the plaintiff examined herself as PW2 and her husband as PW1 who deposed through their duly sworn affidavit Ex.PW2/A and Ex.PW1/A respectively wherein they reiterated all the averments of the plaint and categorically deposed that plaintiff Manjit Kaur is owner in possession of suit house which she has purchased from defendant no.1 by way of sale deed/ conveyance deed 11.6.1993 Ex. P1 for consideration. By filing written statement, the defendant no.1 admitted the fact that plaintiff owns and reside in the house no. B-590, Ranjit Avenue, Amritsar and as such by filing written statement



defendant no.1 admitted the correctness of sale deed dated 11.6.1993 Ex.P1. However, the defendant no.1 by filing written statement denied the dimensions of the suit property as mentioned in the sale deed dated 11.6.1993 Ex. P1. This is also case of defendant no.2 who by filing written statement denied the boundaries of the plot which is owned by plaintiff. Now the only question remains here whether the boundaries/ dimensions of the suit house is the same which has been mentioned in the heading of the plaint. I have perused the sale deed dated 11.6.1993 Ex.P1 and agreement to sell Ex. P4, perusal of same reveals that the suit house bounded as East 33 ft road, west 80 ft road, North 30 ft wide road and South house no. B-589 which is also the case of the plaintiff that the boundaries of the suit house is as per sale deed Ex. P1. I have also perused the statement of PW1 Manjit Singh and PW2 Manjit Kaur who during their examination in chief and cross-examination remained quite intact that the plaintiff has purchased the plot(now constructed house) in question from Amritsar Improvement Trust-defendant no.1 and after completion of construction they started living in that house with family. By proving on record site plan Ex.D1 and Ex.D2, the defendant submitted that on the North side of the suit house, there is plot no. B-591, but as per sale deed Ex. P1 there is 30 ft road on the North side of the suit house and as such it can be concluded that the description of the property as given in the sale deed Ex. P1 shall be deemed to be accurate and the defendants are bound by the same. Further the defendants have not been able to prove on record that why at the time of executing sale deed Ex. P1, the defendant no.1 mentioned 30 ft road on the North side of the suit plot (constructed house). Why the defendant no.1 had not taken any initiative to make the correction in the sale deed has not come on record and as



such the defendant no.1 can not deny the-accuracy of the description of the suit property given in the sale deed Ex. P1. However, the defendant no.1 is at liberty to make the correction in the sale deed Ex.P1 as per law. Thus at this stage the defendants have no right to change the nature/ description of the suit property.”

15. The above findings of the learned trial court have been affirmed by the learned appellate Court in paras 14 and 15 of the judgment dated 17.10.2017, which read as follows: –

“14. In its written statement, the appellant/defendant no.1 admitted that respondent/plaintiff Manjit Kaur is owner and in possession of the house bearing no. B-590, Ranjit Avenue, Amritsar. DW1 Nirmaljit Singh, Assistant Town Planner of the appellant Improvement Trust admitted in his testimony that plot no. B-590 was allotted by the appellant to the respondent. He further stated that in the sale deed Ex.P1, all the four boundaries of plot no. 590 were correctly mentioned. This witness again stated that the boundaries in the sale deed Ex.P1 have been wrongly mentioned. In these circumstances, there is no dispute regarding the fact that plot no. B-590 was allotted to the respondent by the appellant Improvement Trust and the concerned sale deed is Ex.P1. From the perusal of Ex.P4, it is evident that prior to the execution of sale deed Ex.P1, one agreement to sell was also executed between the parties. DW1 admitted that boundaries of plot no. B-590 were mentioned in the agreement Ex.P4, which was executed by Amritsar Improvement Trust in favour of Manjit Kaur. In the agreement to sell Ex.P4, it was clearly mentioned that there is a road on the northern side of plot no. B-590. Even in the sale deed Ex.P1, it is mentioned that there is a road on the northern side of the



plot no. B-590. The said sale deed was registered on 14.6.1993 and the same was signed by the competent official of the appellant Improvement Trust on behalf of the vendor. Even its registration endorsement Ex.P2 was also signed by the authorised official of the appellant Improvement Trust. Even the agreement to sell Ex.P4 was also signed by the authorised official of the appellant Improvement Trust. It is also evident that till date, no notice was issued by the appellant to the respondent alleging that due to mistake/oversight, the boundaries were wrongly written in the agreement to sell Ex.P4 and sale deed Ex.P1 and they are to be rectified.

15. *It is also evident that at the time of development of the colony, master plan must have been prepared by the appellant Improvement Trust. Accordingly, the plotting was done and lay-out plan was prepared showing the location of each plot and road, situated in the said colony. In the case in hand, two sites plans were produced by the Improvement Trust, which are Ex.D1 and Ex.D2. Both these site plans are not bearing signatures or seal of any Town Planner or Engineer of the appellant Improvement Trust. So, much reliance cannot be placed on both the said site plans. The appellant failed to produce the master plan as well as lay-out plan of the concerned colony to prove that plot no. B-591 exists on the northern side of plot no. B-590 or that there exists no road on the northern side of plot no. B-590."*

16. From the above, it is clear that the agreement to sell (Ex.P4); the sale deed (Ex.P1); as also the registration of endorsement of the sale deed (Ex.P2) have all been proven on record in accordance with law. All the said documents clearly and unambiguously mention that there is a road on the northern side of plot no. B-590. Even no reliance can be placed upon

the two site plans (Ex.D1 and Ex.D2) as the same are not bearing the signatures of the competent authority; and they have also not been proven in accordance with law before the learned Courts below. As such, the site plans (Ex.D1 and D2) were correctly rejected by learned appellate Court as admittedly there is no signature or seal of any Town Planner or Engineer of the appellant-Trust. It is also to be noted that the defendant No.1 failed to produce the master plan as well as lay-out plan to prove that plot no. B-591 exists on the northern side of plot no. B-590; or that there exists no road on the northern side of plot no. B-590. Furthermore, it is relevant that admittedly, the plaintiff has already constructed her house on the plot no. B-590.

17. Further, on a Court query it has been admitted by learned counsel for the appellant that till date the appellant has not filed any proceedings for correction of the sale deed (Ex.P1). It is also admitted by learned counsel for the appellant that no sale deed was proved by defendant No.2 in his favour. Only allotment letter (Ex.D3) was placed on record.

18. In view of the above undisputed position, no ground is made out that calls for interference in the concurrent findings of the Id. Courts below.

19. The present regular second appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

03.02.2025

Divyanshi

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(NIDHI GUPTA)

JUDGE