

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****225****RSA-1974-2013 (O&M)****Date of decision: 24.09.2025****Johny Kumar****...Appellant(s)****Vs.****Sohan Lal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. M.S.Sidhu, Advocate for the appellant.

Mr. Viren Jain, Advocate for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant No.1 against the judgment of reversal dated 27.02.2013 passed by the Additional District Judge, Ludhiana; whereby suit of the plaintiff/respondent No.1 herein has been decreed.

2. Brief facts of the case are that the plaintiff/respondent No.1 alongwith his brothers Madan Lal and Sham Lal were owners of the suit property. Madan Lal had since expired, and the defendants are LR's of the deceased Madan Lal and in possession of their respective shares on their properties. The plaintiff pleaded that there exists a verandah which is being used by the plaintiff and the defendants for ingress and egress for the last 35 years. It was averred that during the lifetime of Madan Lal, there was an Agreement between Madan Lal and plaintiff in the presence of respectables that the verandah/Gali shown in red color in site plan attached and marked as point A,B,C, D and E measuring 4' x 20' would not



be constructed upon by both the parties. However, defendants wanted to construct upon verandah and in order to do so, defendants had collected building material. Defendants with the help of some henchmen had also tried to construct the verandah; thereby closing the passage of the plaintiff. However, the plaintiff had saved his rights with the timely intervention of the respectables. With these pleadings, suit for permanent injunction restraining the defendants and their agents etc. *“from constructing the street/passage which is used by the plaintiff for the purpose of ingress and outgress shown red in the site plan attached and marked as point A, B, C, D & E measuring 4' x 20' in the property bearing no.2285, Gali no.1, Fauji Mohalla, Ludhiana”* was filed on 17.02.2000.

3. Vide judgment and decree dated 13.01.2012, the learned Civil Judge (Junior Division), Ludhiana had dismissed the suit of the plaintiff. However, the appeal filed by the plaintiff was accepted by the learned Additional District Judge, Ludhiana vide judgment and decree dated 27.02.2013; and the suit of the plaintiff was decreed. Hence, the present Second Appeal by defendant No.1.

4. It is *inter alia* submitted by learned counsel for the appellant that the appellant is not disputing the possession of the plaintiff on the Ground Floor. It is contended that however, the appellant is owner in possession of First Floor. As such, the appellant cannot be restrained from raising construction on his floor. Learned counsel refers to the averments made in his written statement to further submit that Rakha Ram, grandfather of the appellant (father of the plaintiff) had executed a legal



and valid Will in favour of the appellant, as per which, appellant is exclusive owner of the suit property. It is submitted that it was categorically stated by the appellant in his written statement that it is the plaintiff who is wrong doer and who is forcibly occupying the portion left by defendant No.1 for ingress and outgress. As such, plaintiff had no right to claim injunction against the appellant. It is submitted that in fact there is no street in the property, but it is portion / area left for the proper utilization of the property. The appellant has no intention to block the alleged street shown in the site plan attached but he wants to put roof on the portion left for his proper utilization. In fact the intentions of the plaintiff are malafide and he himself intends to cover the portion which he has shown as Gali whereas there is no Gali. The appellants have no objection ingress and outgress of the plaintiff till he resides in the said property.

5. It is submitted that learned Trial Court had duly and properly appreciated the facts of the matter. However, the learned first Appellate Court has wrongly held that in case the defendants are allowed to raise construction, they will block the passage, which is being used by the plaintiff for his ingress and outgress. It is contended that in doing so, the learned first Appellate Court has ignored the categoric averment of the appellant that he has no intention to block the passage/Gali shown in site plan but wants to construct a roof on the portion left for its proper utilization. It is reiterated that the appellant has no objection at the ingress and outgress of the plaintiff till he resides in the property.



6. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgment and decree dated 27.02.2013 passed by learned first Appellate Court be set aside.

7. *Per contra*, learned counsel for the plaintiff/respondent No.1 vehemently opposes submissions made on behalf of the appellant and submits that in case the appellant raises construction on his First Floor, the same will block the sunlight and air on the residence of the plaintiff. Further, any construction raised by the appellant would project on the Gali and also create hindrance in the ingress and egress of the plaintiff.

8. It is further submitted that the appellant had previously filed a civil suit for permanent injunction where he had admitted these facts to be true. Accordingly, provision of Order 23 Rule 4 CPC, would come into play. It is accordingly prayed that the present appeal be dismissed.

9. No other argument is raised on behalf of the parties. I have heard Id. Counsel and perused the case file in great detail.

10. After giving my thoughtful consideration to the rival submissions of the parties, I find merit in the submissions advanced on behalf of the plaintiff/respondent no.1. A perusal of the record of the case indicates that the learned Trial Court had dismissed the suit of the plaintiff by holding that there was no document on file to show the ownership of the plaintiff over the suit property. Learned Trial Court had also disbelieved the statement of the plaintiff that an Agreement/Compromise had been effected between the plaintiff and Madan Lal/father of the appellant that they would not construct over the Gali as no such writing



was brought on record by the plaintiff. Learned Trial Court also took note of the fact that the Will Ex.D1 propounded by defendant No.1 was registered and had been proved by the Clerk of office of Sub Registrar. Learned Trial Court also held that relief claimed by the plaintiff cannot be granted to him unless and until plaintiff is in exclusive ownership over the property. Suit was also held to be bad for non-joinder of necessary party.

11. However, in holding as above, learned Trial Court has not considered the complete facts and aspects of the case. Learned Trial Court failed to appreciate that not just the plaintiff, in fact, both the parties had failed to prove their ownership over the suit property. Proof of ownership was not produced by either party.

12. The appellant cannot claim to be owner on the basis of the Will dated 17.9.1991 Ex.D-1, as the appellant has failed to prove the Will propounded by him accordance with law. The trial court was in error in holding that the said Will stood proved, merely on the basis of the fact that registration thereof was proved by the Clerk DW1. Admittedly, appellant has not examined any marginal witness of the Will to show that the same was duly executed by Rakha Ram in favour of defendant No.1. As per Section 68 of the Evidence Act it was mandatory for the appellant to examine one of the marginal witnesses. Mere registration of the Will does not prove its execution by Rakha Ram. Thus, finding of the learned Trial Court to the effect that Will stood proved as Clerk of office of Sub Registrar has deposed that Will was registered, was correctly reversed by learned first Appellate Court. Needless to say, as the appellant has failed



to prove Will dated 17.09.1991, the property flowing from Rakha Ram, common predecessor-in-interest of the parties, the property in dispute would be inherited by way of succession. The Will having not been proved, cannot be looked for collateral purpose.

13. Further, if neither of the parties is proved to be exclusive owner of the property in dispute, the plaintiff being co-owner of the suit property and in possession of the portion of big house of which red portion forms the passage to the houses of the all co-owners, defendant cannot be permitted to raise construction or lintel, obstructing the passage which is common to the portion in possession of the plaintiff, Madan Lal, Mohan Lal and Sham Lal. A perusal of the site plan Ex.P1 clearly shows that in case any construction is raised by the appellant which would project over the Gali, the same would cause obstruction in the passage and would hinder the ingress and outgress of the plaintiff through the suit property, as also obstruct the sunshine and fresh air. As such, plaintiff was entitled to injunction against defendant No.1.

A perusal of the record further reveals that defendants had previously filed a Civil Suit No. 188 dated 03.06.2004 for permanent injunction *“restraining the defendant, either himself or through his agents, servants, attorneys, employees, assigns, relations etc. from interfering in the use and occupation of the portion of the property #2285, St.#1, Fauji Mohalla, Basti Abdullapur, Ludhiana further restraining the defendants from causing any hindrance for the plaintiff in putting the lintel over the passage marked ABC & shown green in the site plan*



attached in the above said property.” In the said Civil Suit, appellant in his cross-examination as PW1 has admitted as follows: -

“The name of my father is Madan Lal who was expired on but I cannot say on which date my father was expired. I have not produced death certificate of late Madan Lal in the file. My mother is alive whose name is Deepo Rani, I have filed this suit also on behalf of Monu Kumar who was minor at the time of filing suit and I filed this suit as a guardian of Monu Kumar. I have not appointed as guardian of minor Monu by any competent court. I cannot say whether the property bearing no.2285 street no.1 Fuji Mohalla Abdula Pur Basti Ludhiana transferred in my name in the Municipal corporation authority or not. Site plan Ex.P1 is prepared at the instance of us and it bears my signature. It is correct that on the site plan Ex.P1 I never mention the exact dimension of the house in site plan Ex.P1 nor I have mentioned name of neighbours. It is correct that on the site plan Ex.P1 I nowhere mention where the windows and where the doors are affixed. It is correct that the property in dispute is constructed is double story building but the site plan Ex.P1 which I produced before the court is only a rough site plan of the ground floor. It is correct that on Ex.P1 I did not mention anywhere what is the main door of my own house for the purpose of entrance and entrance. It is correct that wherever house is situated the street was closed. It is correct that from the portion shown green in the site plan attach there are two double storeys buildings already in existence. The width of portion shown green in the site plan is 20x5. It is correct that the portion green shown in the site plan Ex. P1 is the only source of air and light for the house belong to Solan Lal. It is incorrect that I live deliberately filed a wrongly and desorted



site plan at the time of filing the present suit. It is further incorrect that I have deliberately no mentioned the exact dimension of the suit property. It is further incorrect that I have deliberately not impladed my mother as party in the suit. It is correct that earlier to my suit Sohan Lal my uncle has filed a suit against us vide which the court of Sh.Sharandeep Singh CJJD granted a injunction order against us and it is incorrect that the present case filed by me is counter case. It is correct that the case filed by Sohan Lal was dismissed in default. It is correct that my uncle also filed an application for registration of case earlier dismissed in default and I appeared in that application which is pending in the court of Ms. Ravi Inder Kaur CJJD, Ludhiana. I have not brought even a single document before this court from which it is shown that I am owner of this particular property. It is incorrect that I deliberately in order of create hindrence towards the property of my uncle's property wants to construct the portion shown green in site plan Ex.P1. It is correct that the person wants to enterance and outrance from the house of Sohan Lal there is only this particular passage which shown green in the site plan Ex.P1. It is incorrect that we beat mercilessly Vicky Hans s/o Sohan Sal Hans at the time of filing the present suit. It is further incorrect that I tendered written appology for my act. Remaining cross-examination deferred on request of counsel for the defendant.”

14. A bare reading of the above clearly shows that the appellant has categorically admitted that the passage is the only source of air and light to the house of the plaintiff; and that the said passage is also the only ingress and outgress to the house of the plaintiff; and that the appellant has no documents to prove his ownership over the suit property. I



therefore, find merit in the argument of learned counsel for the plaintiff that as per Order 23 Rule 4 CPC, appellant would now be estopped from raising any further plea against the facts which already stand admitted by the appellant. The appellant also does not deny that the said Civil Suit was subsequently withdrawn by him on 17.01.2012. Moreover, at the time of withdrawing of this previous Civil Suit, appellant had sought no liberty. Furthermore, plaintiff had categorically stated in his evidence that the suit passage is the only source of air and sunlight to the plaintiff; and no cross-examination of the plaintiff had been conducted by the appellant on this point. As per the established position in law the same would amount to admission of the said fact by the appellant.

15. In these circumstances, it would be apposite to refer to a judgment of this Court rendered in **RSA-2854-2013** titled as **Gurdip Singh vs. Daljit Singh, decided on 27.11.2013**, the relevant portion of which reads as under:-

“From the pleadings of the parties, it is not in dispute that there is a common passage which has been left by the father of the parties for the use of ingress and outgress of the houses of the parties. Now the defendant has raised construction over and above 12 feet of common passage. The aforesaid construction creates hindrance in the common passage which is only a way for ingress and outgress of the house. The fact remains that the passage was a common and being joint between co-owners, none had any right to raise construction over it. Once it was admitted that the passage was common between the parties, then defendant-respondent was left with absolutely no right to raise any



construction over the same in any form, not even at the height of 12 feet, as the same would remain joint without any exclusive right of anyone. Clearly the construction made by the appellant over the common passage at the height of 12 feet stands admitted and proved. Once the common passage/street was covered with a overhead projection throughout at 12 feet, the air and light flow shall naturally be obstructed to the house of the plaintiff which is at the end of common passage/street and he would not be able to get the same amount of air and light as prior to the said construction. In fact, appellant himself has stated that special duct has been left for air and light for the plaintiffrespondent and this also shows that there was some obstruction in the light and air flow of the house of defendant due to his construction. In any case, once the Court has come to the conclusion that construction raised over and above the common street is illegal and could not have been raised then nothing more is required and as a natural result, the judgment of the first Appellate Court cannot be held to be erroneous.”

16. Ld. Counsel for the appellant is unable to dispute or controvert the above said facts and findings. In view of the above, I find no error in the judgment dated 27.02.2013 passed by learned Additional District Judge, Ludhiana. The present Regular Second Appeal is hereby **dismissed.**

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

24.09.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No