



RSA-3848-2014 (O&M)

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

RSA-3848-2014 (O&M)

Date of decision : 05.03.2025

Sant Ram & ors.

..... Appellants

versus

Pawan Kumar & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Vikas Chatrath, Advocate for the appellants.

Mr. Munish Mittal, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

1 LRs of plaintiff-Roshni Devi are in second appeal aggrieved of the judgment and decree passed by the District Judge, Yamuna Nagar, Jagadhri affirming the judgment and decree passed by Civil Judge (Jr. Division) Jagadhri dismissing the suit filed by the plaintiff. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellants as plaintiffs and respondents as defendants.

2 Plaintiff filed suit seeking decree of mandatory injunction in form of a mandate to the defendants to remove encroachment marked as ABCD in the site plan attached to the plaint. Plaintiff claimed to be owner in possession of double storied shop on the strength of a sale deed dated 07.05.2007. Property of the defendants lies towards southern side. As per the plaintiff Amir Chand father of the Pawan Kumar purchased property measuring 34 sq. yards from Maya Ram etc. vide registered sale deed dated 06.12.1974. After the death of Amir Chand, the same was inherited by Pawan Kumar and other family members who sold away the same property



to the defendants. Plaintiff claimed that after he purchased the property, defendants illegally and forcibly encroached upon part of the property marked as ABCD. It is part and parcel of the property purchased by the plaintiff from Pawan Kumar vide registered sale deed dated 07.05.2007.

3 Suit was contested by the defendants questioning the maintainability of the same. It was admitted that the parties have a common wall EG. Defendants claimed to be owner in possession of their shop vide sale deed dated 16.02.2005. It was claimed that the common wall existed between the two properties much prior to the plaintiff came in possession of the property in 2007. Suit filed by the plaintiff was put to trial framing following issues :-

- “1. Whether plaintiff is entitled for mandatory injunction directing the defendants to remove the encroachment marked by letters ABCD from the portion of the property mentioned in the head note of the plaint? OPP.*
- 2. Whether suit is not maintainable? OPD.*
- 3. Whether has no locus standi to file the present suit? OPD*
- 4. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*
- 5. Whether suit is bad for non joinder and misjoinder of necessary parties? OPD.*
- 6. Whether suit is barred by limitation? OPD.*
- 7. Relief.”*

4 Trial Court while answering issue No.1 held that apart from a bald statement and the site plan, there is no evidence led by the plaintiff to prove encroachment at the hands of the defendants. As per the plaintiff's own case, the construction was raised much prior to filing of the suit.



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Returning finding on issue No.1 against the plaintiff, Trial Court dismissed the suit.

5 The aforesaid finding stands affirmed by the Lower Appellate Court. While issuing notice of motion on 02.02.2015 this Court observed as under :-

“Learned counsel for the appellant submits that parties are not averse to amicable settlement in case the defendants are summoned.

Notice of motion on a limited point for 27.7.2015.”

6 Learned counsel for the plaintiff does not dispute that notice of motion was issued for a limited purpose to explore the possibility of amicable settlement. Attempts to reach at amicable settlement have failed and could not bear any fruits.

7 On merits, counsel for the plaintiff is not in a position to dispute that no evidence was led by the plaintiff before the Court of the First instance to prove any encroachment at the hands of the defendants. It is admitted case of the parties that no fresh construction has been raised after plaintiff purchased the property in question. Defendant is in possession of the property prior to the possession of the plaintiff.

8 In view thereof, this Court does not find any reason to interfere in the pure finding of facts recorded by the Court below.

9 Resultantly, the appeal is dismissed.

05.03.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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