



**In the High Court of Punjab and Haryana, at Chandigarh**

**Second Appeal Order No. 106 of 2017 (O&M)**

**Date of Decision: 16.05.2025**

Purshotam Dass

... Appellant(s)

Versus

Indraj and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Gautam Goyal, Advocate  
for Mr. Ashim Aggarwal, Advocate  
for the appellant(s).

Mr. Aayush Gupta and Ms. Niharika Almadi, Advocates  
for the respondents No.1 and 2.

**Anil Kshetarpal, J.**

1. The plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision.
2. The plaintiffs filed a suit for the grant of decree of permanent and mandatory injunction claiming that the suit property is a street and the defendants should be restrained from encroaching upon the same. It was further asserted that the construction raised by the defendants in the area of street should be directed to be removed. The defendants filed a counter-claim besides filing their written statement.
3. The Trial Court, while culling out the issues, has overlooked the counter-claim of the defendants. While decreeing the suit, the Trial Court has failed to decide the counter claim. Consequently, the First Appellate Court has remitted the matter back to the Trial Court.

4. The learned counsel representing the appellant submits that in the counter-claim, the defendants have claimed decree for permanent injunction which will be covered by issue No.1.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. In the counter-claim, the defendants are claiming to be the owners of the property. Hence, it is a simplicitor counter-claim which is to be treated as an independent suit i.e. a suit for injunction. A prayer for injunction is based upon the ownership which the defendants claim. In any case, the First Appellate Court has found that the procedure adopted by the Trial Court was erroneous. In such circumstances, it would be inappropriate for this Court to interfere with the impugned order.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order passed by the First Appellate Court. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)**  
**Judge**

**May 16, 2025**  
**“DK”**

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