

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****118****RSA-14935-2018 (O&M)****Date of decision: 22.12.2025****Lakhmi Chand****...Appellant(s)****Vs.****Rajbir****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Sushil Jain, Advocate for the appellant.***********NIDHI GUPTA, J.**

Plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for declaration with consequential relief of permanent injunction, has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiff had sought declaration that plaintiff is exclusive owner in possession of the southern wall marked by letters C to D shown in red colour in the Site plan; **and** a further decree for permanent injunction restraining the defendant from creating any hurdle in using the said wall.

3. It was the pleaded case of the appellant in the plaint that the plaintiff is exclusive owner of the shop-cum-residential house as described in the plaint which is marked and pointed as mentioned in the Site Plan. It was pleaded that the said shop was allotted and possession was delivered to the plaintiff on 09.08.1967. It was contended that the wall in dispute forms part of the said shop. Therefore, the said wall is the exclusive wall of



the plaintiff and defendant has no right over it. It was further alleged that the defendant has tried to create hurdles in the southern wall and is adamant to demolish the same by claiming his share. Plaintiff had requested defendant many times to admit his claim however on 07.05.2012, defendant had refused to do so. Accordingly, present suit was filed on 10.05.2012.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Sonapat had dismissed the suit of the plaintiff vide judgment and decree dated 26.08.2015. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Sonapat vide judgment and decree dated 12.07.2018. Hence, the present second appeal by the plaintiff.

5. It is *inter alia* submitted by learned counsel for the appellant that the Courts below were in patent error in dismissing the suit of the plaintiff as plaintiff has examined PW1 to PW3 and placed on record relevant documentary evidence, which prove that the plaintiff is exclusive owner of the shop cum residential house/suit property which was allotted to him on 09.08.1967 and possession was also delivered. It is submitted that learned Additional District Judge has also recorded a positive finding that the appellant had already constructed his two-storey building as depicted in the Site Plan Ex.P1. However, the respondent had produced Compromise Mark A which allegedly bears the signatures of both the parties, and as per the Compromise, both the parties will raise construction of 4" wall on their sides and they will be responsible for any



damage to the house of the other. Learned counsel submits that however, the learned Additional District Judge had failed to appreciate that the appellant had disputed the said Compromise and had clearly stated that his signature had been taken forcibly upon the said Compromise. He accordingly prays that the impugned judgments and decrees suffer from patent errors and are based on mere conjectures and surmises and deserve to be set aside.

6. No other argument is raised on behalf of learned counsel for the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

7. A perusal of the record of the case shows that both the Courts below have returned clear, categoric, and concurrent findings of fact that plaintiff has failed to prove his ownership and possession over the suit property. As per the Allotment Order dated 09.08.1967 Ex.P2, dimensions of the property as allotted to the plaintiff by the Punjab Wakf Board do not match with the dimensions as mentioned by the plaintiff in the Site Plan Ex.P1 produced by him. Even otherwise, as per the Allotment Letter Ex.P2, the suit property was only leased out to the plaintiff for ground rent of Rs.3.50 per month. Clearly therefore, Ex.P2 does not confer any ownership right to the plaintiff over the suit property. Evidence of PW2 Raghunath and PW3 Kishan Lal relied upon by the plaintiff also did not inspire the confidence of this Court as clear finding has been given that the said witnesses are procured witnesses and both have no personal



knowledge of the case. Plaintiff had further claimed that he had constructed the shop cum house in 1967, but no documentary or oral evidence was produced by the plaintiff to show that he actually came into possession over the disputed property in 1967. Plaintiff in his cross-examination has himself admitted that before Jai Prakash, one Kishan Shah was residing in the house of the respondent. This admission of the plaintiff negatives his claim of prior possession over the suit property. On the other hand, the defendant has successfully proved his ownership and possession over the suit property. Furthermore, plaintiff was unable to prove that his signature had been forcibly taken on the Compromise Mark A.

8. Relevant findings of the First Appellate Court in judgment dated 12.07.2018 as contained in paras 14, 15, 16 and 17 are as under: -

“14. The appellant has claimed himself to be the owner of the shop-cum-house whose southern wall is in dispute, however, he has placed on record the allotment letter Ex.P2 showing himself only the lessee of the property and not its owner. The main dispute in this appeal is regarding the ownership of the wall KL as shown in the site plan Ex.P1 which the appellant has claimed to be exclusively owned by him and the respondent has no right over the same. In order to prove this fact the appellant has examined himself and he has also examined PW2 Raghunath and PW3 Kishan Lal.

15. PW2 Raghunath though has stated that the wall in question belongs to the appellant but in his cross-examination he has stated that at the time the wall in question was constructed he used to sell fruits on a cart there. He further stated that he used to do that in the year 1985. However, the



appellant has taken a stand that he had constructed his house in the year 1981. Meaning thereby, this witness is Rajbir a procured witness and he has no personal knowledge about the case.

16. PW3 Kishan Lal in his cross-examination has stated that it is the appellant who had told him that he had a dispute with the respondent regarding the shop. Meaning thereby, he has also no personal knowledge about the case. The appellant Lakhmi Chand in his cross-examination has stated that prior to Jai Parkash, Kishan Shah used to reside in the house of the respondent. Meaning thereby, prior to Kasthuri Devi widow of Jai Parkash from whom the father of the respondent/defendant purchased the adjoining property, it is Kishan Shah who was in possession of the same. The appellant has taken a stand that he had constructed the house for the first time in the year 1967 and second in the year 1981. However, there is nothing on record which could show that in the year 1967 the appellant was in possession of the shop-cum-residential house bearing No. 6/203 about whose southern wall there is a dispute between the parties to the proceedings. No effort has been made by the appellant to bring on record any evidence to show that Kishan Shah came in possession of the adjoining property after construction of the shop-cum-house of the appellant. On the other hand, the respondent Rajbir has examined himself and he also examined DW2 Meer Singh who has stated that the father of the respondent/defendant had purchased adjoining house-cum-shop from Smt. Kasturi Devi widow of Jai Parkash and the wall in question is the separate property of the respondent. The respondent has also placed on record a compromise mark A which reveals that a compromise was effected between the parties to the proceedings in an application which was moved to police post Incharge City,



Sonepat wherein it has been mentioned that Rajbir had moved an application against his neighbour Lakhmi Chand regarding a dispute over a wall. The matter has been compromised to the effect that the both the parties will raise construction of 4" wall on their sides. They will be responsible for any damage to the house of the other. This document bears the signatures of both the parties. The appellant has not disputed that such compromise had taken place, however, he has taken a stand that his signature was taken forcibly. No effort has been made by the appellant to approach any authority for taking his signature forcibly in the police station on compromise mark A.

17. From the cumulative reading of the aforesaid evidence, it is clear that the appellant has failed to show his ownership over the wall in question and he also admitted the right of opposite party in police station. Besides this in this case the respondent has examined himself and he has also placed on record photograph Ex.DW5/A which reveals that the wall in question is only 4" wide and has been constructed only up to 9/10 feet in height. The appellant has already constructed his two storey building as depicted in the site plan Ex.P1. Generally the houses are constructed by taking support of wall which is 9" in width. Meaning thereby, the appellant has already constructed his house on his wall and he has no concern with 4' wide wall as depicted with letters KL in the site plan Ex.P1 and this fact has been rightly observed by learned lower court while passing the impugned judgment and decree. So, the first question posed before this court is answered accordingly."

9. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

10. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.
11. Pending applications, if any, stand disposed of.

22.12.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No