

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-2805-2024 (O&M)**

Date of decision: 29.10.2025

Yunush @ Yonush Salim

...Appellant

Versus

Mohar Khan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Arjun Atri, Advocate for the appellant.

DEEPAK GUPTA, J. (ORAL)

This Regular Second Appeal has been filed by the defendants against the concurrent findings of the Courts below, whereby the suit for permanent injunction filed by the plaintiff – Mohar Khan (contesting respondent herein) was decreed by the learned Trial Court on 10.01.2020, and the appeal preferred by defendant No.2 – Yunush (appellant herein) was dismissed by the learned First Appellate Court vide judgment dated 03.07.2024.

2. **Facts of the Case :** The case of the plaintiff is that he is owner in possession of a house marked by letters 'AGDEF' in the site plan (Ex. P-9) situated in *Abadi Deh* of village Khedla, Tehsil and District Nuh. Towards the eastern side of the house lies a common street being used by both parties for ingress and egress. The drainage and sewer pipelines of the plaintiff pass through this street. It was alleged that the defendants constructed a water tank in the said street and had started collecting building material with an intention to encroach upon the common passage. Hence, the suit for permanent injunction was filed to restrain the defendants from interfering with the plaintiff's rights over the common street.

3. The defendants contested the suit by disputing the correctness of the site plan and asserting that the disputed portion was not a common street, but rather the personal property of defendant No.1 (Habib). It was further pleaded that defendant No.1 had sold the property to the wife of



defendant No.2 (appellant) and that the house of the plaintiff was limited to the portion marked 'GHJI', having no concern with the disputed passage.

4. **Findings of the Courts Below :** The Trial Court, after framing the necessary issues and appreciating the evidence on record, decreed the suit in favour of the plaintiff on 10.01.2020. The First Appellate Court, upon reappraisal of the evidence, affirmed those findings and dismissed the appeal of the defendant on 03.07.2024.

5. The First Appellate Court, while dealing with the rival contentions, made the following material observations:

- From the discussion of the evidence of the parties, it is clear that none produced any ownership document for the suit property. However, from the admission of defendant No.2 during cross-examination, it is proved that the gate of the plaintiff's house opens towards the suit property.
- The plaintiff relied upon site plans Ex.P1 (from the earlier case *Mohar Khan v. Isha Khan*, decided on 12.11.1994), Ex.P9, and Ex.P10—all depicting a common passage between the houses of Hazi Atru and Habib Khan (defendant No.1).
- PW-4 Hasim Ali deposed that he had seen the disputed passage since his childhood. Conversely, the defendants produced no document showing ownership of the passage. Defendant No.2 admitted that waste water outlet of Hazi Atru opens into the disputed land.
- DW-1 Hasin Ahmad, the draftsman who prepared Ex.D1, admitted during cross-examination that he neither called the plaintiff nor Hazi Atru at the time of inspection and had omitted to show the iron gate of the plaintiff's house on the eastern side. Hence, Ex.D1 was held unreliable.
- Accordingly, it was held that the land in dispute is not the personal property of the defendants and must be presumed to be a common passage, over which the defendants have no right to encroach.

6. **Consideration by this Court :** The findings recorded by both the Courts below are based upon proper appreciation of oral and documentary evidence. The concurrent conclusion that the disputed



land constitutes a common passage is supported by consistent documentary proof, admissions of the defendants, and credible witness testimony.

7. Learned counsel for the appellant has failed to point out any illegality, perversity, or misreading of evidence in the concurrent findings.

8. **Conclusion :** In view of the foregoing discussion, no question of law, much less a substantial one, arises for consideration. The concurrent findings being well-reasoned and supported by evidence, call for no interference. Consequently, the present appeal is dismissed, being devoid of merit.

29.10.2025

Yogesh

**(DEEPAK GUPTA)
JUDGE**

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