



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

RSA-2910-1988(O&M)

Reserved on: 06.02.2026

Pronounced on: 13.02.2026

Vijay Kumar and others

... Appellants

Versus

Municipal Committee Rupnagar and another

... Respondents

2.

RSA-2921-1988(O&M)

Ashok Kumar (deceased) through LR's and others

... Appellants

Versus

Municipal Committee, Rupnagar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vijay Lath, Advocate,
for the appellants in RSA-2921-1988.

Mr. Jaideep Verma, Advocate,
for the appellant in RSA-2910-1988.

Mr. Harsh Chopra, Advocate,
for respondent No.1.

Mr. Roop Jain, Advocate,
for respondent No.2 in RSA-2910-1988,
(through Virtual mode).

VIKRAM AGGARWAL, J.

Both afore-titled appeals have been instituted by the defendants against a judgment of reversal. The suit for permanent injunction instituted by the plaintiffs (Municipal Committee Rupnagar and Nand Kishore Bhandari) was dismissed by the Court of Additional Senior Sub Judge, Ropar, vide judgment and decree dated 24.11.1983. However, separate



appeals preferred by both plaintiffs against the said decision were allowed by the Court of Additional District Judge, Ropar, vide judgment and decree dated 06.09.1988, thereby decreeing the suit.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs (Municipal Committee Rupnagar and one Nand Kishore Bhandari) instituted a suit for permanent injunction restraining the defendants (Raj Rani and 17 others) from blocking or interfering into the free use of the passage shown as IFEKJ and directing them to remove or demolish the structures raised on the passage shown as ROHIJKIM, depicted as red in the site plan.

4. The case set up was that there was a Nazul land, depicted as ABCDEFG in the site plan, where the old grain market was situated. The shop of plaintiff No.2 was depicted as yellow in the site plan, which was attached with the plaint. It was claimed that the passage towards South of the shop of the plaintiff was measuring 74 ft. x 46 ft. and towards the West, it was 31 ft. x 10 ft. It was claimed that this passage was leading to the shop of the plaintiff and was situated on Nazul land, and the plaintiff had been using the same from times immemorial for going to his shop, which was the only access to his shop.

4.1 It was claimed that two months prior to the institution of the suit, the defendants had encroached upon the said passage and had raised some temporary super structure and construction thereby closing the passage and narrowing it down. This act had caused damage to the plaintiff, as the passage, which had been blocked by the defendants (depicted as red in the



site plan) was freely used by the public at large. Under the circumstances, it was claimed that the plaintiffs were entitled for a decree of permanent injunction restraining the defendants from blocking the passage and for removing construction.

4.2 It was further claimed that the defendants had encroached upon the passage in front of their shops illegally and without any right and title. It was claimed that the application for sanction of site plan submitted by defendants No.1 to 6 had already been rejected by the Municipal Committee on 21.11.1978, but despite the refusal, the defendants raised construction and encroached upon the passage. Similar allegations were raised against defendants No.7 to 17.

4.3 It was claimed that the plaintiff(s) had acquired the right of way of prescription over the said passage and the right of necessity.

4.4 Certain details of litigation between the original vendor of the shops, namely, S. Umrao Singh and Municipal Committee, were also given. It was claimed that in the said suit, a compromise had been arrived at between the parties on 20.03.1911, whereby it was agreed that nobody would raise the constructions on Nazul land but the same could be used for placing material. It was claimed that the said compromise was binding upon the defendants, as they were successors of the owners of the said shop(s).

5. The suit was opposed by the defendants by way of separate written statements, wherein they claimed to be the owners of their respective shops and denied that any encroachment had been made.

6. Replications were filed denying the averments made in the written statements and reiterating those made in the plaint.



7. From the pleadings of the parties, the following issues were framed by the trial Court:-

“1. Whether the suit is maintainable in the present form? OPD.

1A. Whether the contesting defendants are owners in possession of the disputed property as alleged? OPD.

2. Whether the plaintiff has locus standi to sue? OPD.

3. Whether the suit is bad for mis-joinder of parties? OPD.

4. Whether the suit is within time? OPP.

5. Whether the disputed site ABCDEFG is Nazul land and whether IFEKJ is passage and part of this Nazul land and whether the plaintiff has been using it as a passage since the times immemorial as alleged? OP.

6. Whether the defendants have encroached on the aforesaid passage as alleged? OPP.

7. Whether the plaintiffs are entitled to the permanent injunction prayed for? OPP.

8. Relief.”

8. Parties led their respective evidence.

9. The trial Court dismissed the suit, holding that it had not been proved that the land was Nazul land or that any encroachment had been made by the defendants. It was also concluded that the defendants had duly proved themselves to be the owners of their respective shops. However, based on certain admissions made by the defendants while appearing as witnesses, the first appellate Court reversed the decision of the trial Court and decreed the suit, leading to the filing of the present second appeal.

10. I have heard learned counsel for the parties.



11. Learned counsel for the appellants strenuously urged that the first appellate Court erroneously allowed the appeal(s) and decreed the suit filed by the plaintiffs. It has been contended that no evidence worth its name was produced by the plaintiffs to even *prima facie* prove that the land in question was Nazul land. It has further been argued that the site plan of the disputed site was not proved in accordance with law, nor was any encroachment proved. Learned counsel have contended that the passage in front of the shops is still being used by people who come to the market. It has been argued that the suit had been instituted by the plaintiff Nand Kishore Bhandari, as he was aggrieved by construction of the defendants' shops, as his shop was not visible.

11.1 Learned counsel submitted that once the suit had been instituted by the plaintiffs, it was for them to prove the stand taken therein by leading cogent evidence, which they miserably failed to do and the first appellate Court erred in decreeing their suit merely based upon certain admissions. Learned counsel repeated that the passage in front of the shops has not been encroached upon by anyone and the same is being used by people who come to the market. In fact, learned counsel also undertook that no encroachment would be done in future as well.

12. Per contra, it was submitted by learned counsel representing the respondents/plaintiffs that there is no illegality in the decision of the first appellate Court, for, the defendants while appearing as witnesses duly admitted that the land in front of their shops was owned by the Municipal Committee. It has been submitted that the passage, which was very wide and



the dimensions of which were given in the plaint, has now narrowed down substantially on account of encroachments.

13. I have considered the submissions made by learned counsel for the parties.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others***, (2016)6 SCC 157, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others***, (2019) 11 SCC 317 and ***Satender and others V/s Saroj and others***, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

15. Concededly, the site plan attached with the plaint was not proved in accordance with law. No dimensions were proved. No evidence worth its name was brought on record to prove as to what was the width of the streets when the old grain market had been planed. It was not proved that what was the plan of the old grain market. It was not proved that what was the dimensions of the shops which had been sold. It was not proved as to what encroachment had been made, by whom, when, and to what extent. It was not proved as to how much width of the streets had been encroached upon. To top it all, it was not proved that the land was Nazul land. The Municipal Committee did not examine even a single witness for reasons which are too obvious. No doubt, the defendants admitted in their cross-



examination that the land in front of their shops is owned by the Municipal Committee. They are even today not denying the same. However, this alone would not be sufficient to prove the case of the plaintiffs. It is well settled that plaintiffs had to prove their own case by leading cogent evidence and they cannot be permitted to derive any benefit from the weakness, if any, in the case of the defendants.

16. Not only this, no Local Commissioner was appointed at any stage, nor any effort was made by either side at any stage. Today, 40 years down the line, but this Court does not find any reason to appoint a Local Commissioner. Even today, if the Municipal Committee deems it appropriate, it can initiate action in accordance with law, but after proving its case. There is no evidence, if any notice, at any point of time, was given by the Municipal Committee about any encroachments.

17. Under the circumstances, merely based upon certain admissions, the suit could not have been decreed.

18. The trial Court returned the following findings:-

“12. The onus of this issue was on the plaintiff and Nand Kishore plaintiff has appeared in the witness box as PW-1 and stated that his shop is depicted by yellow colour in the site plan Ex D-1 which was got prepared by him after making the measurements at the spot and that the site in dispute is shown in red colour. He further stated that the site in dispute is Nazul land and the Municipal Committee is the owner of the property in dispute and the defendants have got no right to make the construction in the property in dispute and that the door of his shop opens towards South He further stated that Raj Rani is now the



owner of the property in dispute and in case the construction remains his passage will be blocked and that his shop is not visible to the customers and the major loss accrues to him because of that construction. The perusal of his statement, therefore, shows that he has even not supported his own case as he has nowhere stated that there is any passage as alleged in the plan or that he had acquired any right of easement by prescription, or that there is any necessity of easement or even that the defendants have blocked the same. He has not even stated that IFEKJ is the passage and that is the part of the Nazul land or that he had been using the same from times immemorial. The onus being on him he has not discharged the same satisfactorily by producing any cogent evidence. He has simply stated that the land is Nazul land. But mere word of his mouth is not sufficient to prove that the land in dispute was Nazul land.

13. As against this Vijay Kumar DW-1 has stated that he had purchased the shop vide sale deed dated 26.8.1978 and that they had not made any encroachment on the suit land. Similarly Ashok Kumar DW5 has stated that Umrao Singh had executed sale deed in his brothers favour on 26.5.1971 for a consideration of Rs. 8500/- and he also stated categorically that there is no passage as alleged by the plaintiff.

14. The learned counsel for the Municipal Committee contended that letter No. 787/C/313/36, dated 13.8.1938 regarding Nazul land alongwith site plan has been produced. Firstly this is not a proved document and, therefore, cannot be read and even otherwise the site plan shows only a site meant for



Grain Market and there is nothing that this was a Nazul land.

15. The Municipal Committee was the other plaintiff in the case and surprisingly none on behalf of the Municipal Committee has appeared in the witness box. Moreover no record has been produced in the court by Municipal Committee. It is a matter of common knowledge that the record of all the setreets etc. especially the Nazul land, is available in the municipal office, but no effort has been made either by Nand Kishore plaintiff or by the Municipal Committee to produce any such record. Therefore, I have no hesitation to hold that the plaintiffs have not discharged the onus which heavily lay on them, by producing cogent evident to prove that the land is Nazul land and IFEKJ is a passage and part of the Nazul land or that the plaintiff has been using it as a passage since times immemorial. The issue is decided accordingly against the plaintiffs.”

19. The first appellate Court, thereafter, gave the following findings in appeal:-

“9. I have gone through the statements of DWS. DW1 Vijay Kumar has stated that on the eastern side of the shop is the property of Nand Kishore and its gate is affixed in the southern side. He has, however, stated that said gate has been closed by Nand Kishore with wooden planks. With reference to the site plan Ex. P1 the suit property is towards the shop of Nand Kishore. It seems that the passage leads towards the southern gate a property of Nand Kishore blockage of which is disputed by the appellant. DW5 Ashok Kumar has stated that in front of his shop purchased



by him, there is open space which vest in the M.C.Ropar. He has stated that there is space left wide to be used by him for placing his goods. He has admitted that he did not purchase the passage in front of the shop shown in the site plan Ex.P1. He has stated that space of 16 feet was given to them through notification in the year 1951. He has also admitted a passage going towards the shop of Nand Kishore while coming from Sadar Bazar. Ram Lal DW3 has admitted that there was a Rasta from the Mandi side. He also admitted that site in front of the shop purchased by the respondent vide sale deed Ex.D1, vest in the committee. All this evidence which has not been discussed by the trial court shown that suit property vest in the municipal committee. The respondent, although, claim to have purchased the suit property in their written statement but while appearing as witness they have admitted that suit property was not purchased by them. It is claimed that suit property was given by the municipal committee through a notification meaning thereby, the ownership of the committee in the suit property is admitted by the respondent. The existence of passage is also admitted by them. Although the plaintiff has to succeed on the strength of his own evidence, which in the present case is lacking but admission of the respondents do suggest that disputed property once vested in the committee and has been encroached upon by the respondents in the garb of purchase of some shops by them. The municipal committee also in the present case has not been able to prove by documentary evidence that the disputed site vest in it



but as already stated the respondents have themselves proved the case of the committee.

10. In view of the discussion made above it can be safely concluded that appellants have been able to prove their case by admission of the respondents and the suit was therefore liable to be decreed.”

20. Clearly, the first appellate Court erred in relying upon admissions and thereupon, decreeing the suit. Undisputedly, nobody can raise encroachment on streets and even in future, the defendants will not do so as has been stated during the course of arguments also. However, as stated above, the appellate Court could not have allowed the appeal and decreed the suit based upon admissions, which too were not admissions about encroachments.

21. That being so, the appeals are allowed. The judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is affirmed. Accordingly, the suit is dismissed.

22. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

February 13, 2026
Rajan
Uploaded on: 16.02.2026

Whether speaking / reasoned:	Yes
Whether Reportable:	Yes