

2026:PHHC:073334



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

114

**RSA-835-2024 (O&M)
Date of decision :11.05.2026**

SOM NATH AND OTHERS

... APPELLANTS

VERSUS

KAMLESH RANI

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Amit Dhawan, Advocate
for the appellants.

PARMOD GOYAL, J. (ORAL)

1. Present regular second appeal has been preferred by appellants-defendants being aggrieved by the impugned judgment dated 19.12.2023 passed by the learned District Judge, Jalandhar, whereby the first appeal preferred by the respondent-plaintiff was allowed and the suit for permanent injunction filed by the respondent-plaintiff for restraining appellants-defendant Nos. 1 and 2 from encroaching upon the southern street, shown in red in the site plan of the plaintiff's house, was decreed. Consequently, the judgment and decree dated 09.02.2021 passed by the learned Additional Civil Judge (Senior Division), Jalandhar, whereby the suit of the respondent-plaintiff had been dismissed, was set aside and the appellants-defendants were restrained from encroaching upon or interfering with the street lying on the northern side of the house of respondent-plaintiff.

2. The simple case of the respondent-plaintiff was that the plaintiff is

the owner of the suit property bearing No. 2807, Bhargo Nagar, Jalandhar. That the appellants-defendants were running a saw mill on the portion shown in green colour of the site plan of the suit property. It was also asserted that on the southern side of house of respondent-plaintiff there exists a street measuring 4 feet in width, which lies on the northern side of the property owned by the appellants-defendants. However, the appellants-defendants were allegedly trying to encroach upon the said street by installing wooden locks/gates, thereby restricting the plaintiff's access to the street. Consequently, the respondent-plaintiff sought a decree for permanent injunction restraining the appellants-defendants from encroaching upon the street and from causing any obstruction in the light and air available from the southern side of his house.

3. The learned Court of first instance rejected the claim of the respondent- plaintiff on the ground that the respondent-plaintiff could not succeed in a suit for permanent injunction simpliciter without seeking a declaration to the effect that the disputed passage was a public street meant for the use for the public. The second ground taken by the Court of first instance for non-suiting the respondent-plaintiff suit was that the Municipal Corporation had not been impleaded as a party to the present litigation. Therefore, no injunction could be granted against the appellants-defendants. Accordingly, the learned Court of first instance had dismissed the suit of respondent-plaintiff.

4. Learned First Appellate Court, vide the impugned judgment and decree dated 19.12.2023, however, concluded that from the evidence led by the respondent-plaintiff as well as from the previous litigation between the parties, it stood clearly established that a street exists on the northern side of the defendants' house/southern side of the plaintiff's house. Since the said passage

was a street and the appellants-defendants had failed to produce any evidence on record to establish their ownership over the same, they had no right to encroach upon it. Consequently, the learned First Appellate Court granted the decree of permanent injunction in favour of the respondent-plaintiff and restrained the appellants-defendants from interfering or encroaching upon the said street.

5. Learned counsel for the defendants-appellants has challenged the findings recorded by the learned First Appellate Court on the ground that the learned Court had failed to take into consideration the sale deeds dated 24.12.1991 and 09.05.2000 as Ex. PW-3/A and Ex. PX respectively, whereby the appellants-defendants had purchased land measuring 7 marlas, and according to them, the street measuring 4 feet formed part of the said land.

6. However, the learned First Appellate Court has correctly appreciated the contents of the aforesaid sale deeds. A perusal of the sale deeds clearly reveals that although the appellants-defendants had purchased land measuring 7 marlas vide the said sale deeds, there is nowhere any mention that the street measuring 4 feet formed part of the said 7 marlas, as claimed by the appellants-defendants.

7. It is pertinent to notice that the reference to the street in the sale deeds has merely been made for the purpose of describing the boundaries of the property. It is specifically mentioned that on the northern side of the property, which is the subject matter of sale deeds Ex. PW-3/A and Ex. PX, there exists a “Gali” (street). In the sale deed, the suit property has been described as Plot No. 2806 measuring 7 marlas. The boundaries thereof have been described as follows: on the eastern side property of Hans Raj @ Kaka; on the western side

a road; on the northern side a street (“Gali”); and on the southern side the house of Bhagwan Dass.

8. From a reading of the above-noted description contained in sale deed Ex. PX, it is clearly made out that the appellants-defendants had purchased the suit property measuring 7 marlas, to the northern side whereof a street/gali existed, which is the subject matter of dispute in the present case.

9. The sole ground taken by the appellants-defendants to justify their exclusive use of the street is that the said street had been left by their vendor for their exclusive use and that formed part of 7 marlas of land so mentioned in the sale deed. However, from the contents of the sale deed, it is evident that the reference to the street has only been made for the purpose of describing the boundaries of the property and that the street lies on the northern side of the property and does not form part of the 7 marlas purchased by the appellants-defendants

10. In fact, no evidence has been led by the appellants-defendants to establish that the street formed part of the 7 marlas of land, i.e. Plot No. 2806, which is the subject matter of sale deed Ex. PX. Since it was appellants-defendants who claimed that the street formed part of Plot No. 2806 and the 7 marlas of land purchased by appellants-defendants, the burden was upon appellants-defendants to prove that the street was included in the said property. Rather, the sale deed itself indicates otherwise. The sale deed, in fact, clearly demonstrates that the street, which is the subject matter of the present case, lies on the northern side of the 7 marla plot sold to the appellants-defendants does not form part of their property. Had the street actually formed part of the house/property of the appellants-defendants, there would have been no occasion

to describe the northern boundary as a “street”. Instead, the northern boundary would have been described as the house of the respondent-plaintiff, which admittedly lies on the northern side of the disputed street. This clearly establishes that the street was a common passage and was not purchased by the appellants-defendants under the sale deed, as claimed by them. Therefore, the learned First Appellate Court was fully justified in granting the injunction and in restraining the parties from interfering with the use of the street by the public at large.

11. I do not find any merit in the present appeal and, accordingly, the same is dismissed.

12. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

11.05.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No