



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

(205)

**Reserved on : 20.01.2026
Pronounced on : 29.01.2026
Uploaded on: .01.2026**

1. RSA-2684-1997 (O&M)

Inder Mohan Bhalla (Since Deceased) Through his LRs ... Appellant

Versus

Gurdev Kaur (Since Deceased) Through her LRs and OthersRespondents

AND

2. RSA- 2685-1997 (O&M)

Inder Mohan Bhalla (Since Deceased) Through his LRsAppellant.

Versus

Gurdev Kaur (Since Deceased) Through her LRs and OthersRespondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :- Mr. K.S. Dadwal, Advocate
for the appellant.

Mr. Robin Dutt, Advocate
Mr. Kartar Singh, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The appellant-defendant, aggrieved by the judgment and decree dated 21.04.1997 passed by the learned Additional District Judge, Hoshiarpur which dismissed their appeal as well as the judgment and decree dated 08.12.1994 of the learned Sub Judge II Class, Hoshiarpur, respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeals (hereinafter referred as "RSAs"). The plaintiffs originally instituted a suit for permanent injunction restraining defendants from causing any damage to the



shop in possession of plaintiffs and also from fixing gate/shutter on the staircase leading to the roof of the shop in possession of the plaintiffs as tenants.

2. Plaintiffs, Gurdev Kaur and Parminder Kaur, filed a suit against Inder Mohan Bhalla and Amar Nath Bhalla, defendants, alleging that Balwant Singh, husband of plaintiff No. 1 and father of plaintiff No.2, was the tenant of the shop in dispute. They claim that the predecessor of the plaintiffs enjoyed the right of user of the first floor via the western stair-case without interference. After Balwant Singh's death, the plaintiffs have continued the tenancy as legal heirs, paying a monthly rent of Rs.50/- and utilizing the shop for a beauty parlour. They use the stair-case to access the roof of the shop for "putting articles in the sun and also enjoy the roof in the winter".

3. The plaintiffs allege that the defendants, allured by attractive market rents, now intend to put a shutter/gate on the stair-case to block the plaintiffs' access. According to the plaint, the defendants have recently opened a small opening from their house towards the roof and are up-rooting cement pointing and throwing water to cause damage. The plaintiffs contend these are evil designs to create grounds for their eviction. They seek to prevent the defendants from setting up the shutter and playing havoc with the shop, asserting that the stair-case was always meant solely for the use of the tenant for access to roof.

4. Upon service of notice, Defendants have filed a joint written statement contesting the suit inter-alia, on the preliminary objections that the site plan filed with the plaint is incorrect. It does not depict the true and correct situation, measurement and boundaries at the spot. The stair-case has no concern with the plaintiffs; the plaintiff have not come to the court with clean hands and have suppressed the true facts; the suit is not maintainable. On merits, they have not disputed the tenancy of the plaintiffs as well as of Balwant Singh, deceased, the predecessor of the plaintiffs but it is denied that Balwant Singh had any concern



with the stair- case and roof of the shop in dispute. He was also having no right of user of the first floor of the shop and the stair- case. They have denied that they have opened the door recently. They alleged that the opening was since long time and the same is still there. They also denied that the stair-case in dispute is only meant for the tenants, but it is pleaded that it is for the use of the defendants. An iron gate was fixed in the stair-case. The same was removed from the walls by the plaintiffs, a few hours before the visit of the Local Commissioner. The possession of the plaintiffs in the shop is not disputed and they are running the business of beauty parlour. They have alleged that no rent was paid to defendant No.2 by the plaintiffs and the plaintiffs were in arrears of rent since March, 1985. Defendant No.2 has filed an ejectment application under Section 13 of the East Punjab Urban Rent Restriction Act and in that application, the plaintiffs tendered arrears of rent which were accepted by defendant No.2 under protest, the same being short and invalid. They also denied the other allegations of the plaint and prayed for dismissal of the suit with special costs.

5. The plaintiffs filed replication to the written statement of the Defendants controverting the pleas taken by them.

6. From the pleadings of the parties, trial court had the following issues:-

- 1. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for in the plaint? OPP.*
- 2. Whether the plaintiffs have filed the correct site plan? OPP.*
- 3. Whether the suit is not maintainable in the present form? OPD.*
- 4. Relief.*

7. For the purpose of adjudicating the aforesaid issues, both parties were afforded adequate opportunities to adduce their respective evidence. Upon appreciation of the material on record and after hearing arguments addressed by



learned counsel for the parties, the learned Sub Judge II Class , Hoshiarpur

Partly decreed the suit in favour of the plaintiffs in following terms-

*“13. As a result of my findings on issues No.1 and 2, the suit of the plaintiffs is **partly decreed** that they can **use the roof** of the shop as well as the stair-case. However, their suit regarding decree of permanent injunction restraining defendants from **affixing a gate** before the stair-case is **dismissed** with no order as to costs. Decree- sheet be prepared accordingly. File be consigned to the record room.”*

8. Feeling dissatisfied and aggrieved by the judgment and decree so rendered, the Appellant-Defendants as well as Respondents-Plaintiffs preferred **separate appeals** before the First Appellate Court. The learned First Appellate Court, upon reappraisal of the evidence on record and after considering the rival submissions, modified the decree of the Trial Court in following terms-

*“ Suit of Gurdev Kaur and Parminder Kaur qua second relief is also decreed restraining Inder Mohan Bhalla and Amar Nath Bhalla from causing any **damage** to the shop in possession of Gurdev Kaur and Parminder Kaur. Defendants are also **restrained from affixing gate/shutter** on the stair case leading to the roof. Appeal filed by Gurdev Kaur and Parminder Kaur is **allowed** with costs while appeal filed by Inder Mohan Bhalla etc. is **dismissed** with costs. Decree-sheets be prepared. File be consigned.”*

9. Dissatisfied with the concurrent findings of fact and law returned by both the Courts below, the Appellant-Defendent(Inder Mohan Bhalla) have now approached this Court by way of the present RSAs. Since both the above

Regular Second Appeals arise out of the same judgment and decree dated



21.04.1997 passed by the learned Additional District Judge, Hoshiarpur, and involve identical questions of fact and law between the same parties, they are being taken up together and are being disposed of by this common judgment.

10. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals 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.

CONTENTIONS

11. Learned counsel for the Appellant-Defendent has strenuously argued that both the Courts below have fallen into manifest error in appreciating the evidence and the legal position arising therefrom. The principal grounds urged may be delineated as follows:-

“A. Staircase and roof not part of tenancy

The tenancy of the respondents was confined to the ground floor shop only. The staircase and roof were never part of the tenancy. Hence, no injunction could legally be granted against the true owner in respect of portions not forming part of the demised premises.

B. Right of ownership and privacy

The Appellant are the owners in possession of the building and



had fixed a gate at the staircase for privacy and safety of their family. The said gate had existed since long, as proved from the Local Commissioner's report and defence evidence.

C. Longstanding user by Appellant

The appellant and their family have been using the staircase and roof for decades as the approach to their residence. The existence of an opening towards the roof and the presence of domestic articles thereon stand proved. The respondents have no concern with the same.

D. Local Commissioner's report ignored

The learned Courts below failed to properly appreciate the report of the Local Commissioner, Shri K.S. Bhatti, Advocate (Ex. DX), who specifically recorded that as far as the staircase is concerned, an iron gate was in existence, though in a loose condition. He further noted the presence of two holes measuring 3" x 3" in the western wall of the shop, clearly indicating that the gate had earlier been fixed at that very spot.

This observation conclusively establishes that the iron gate existed and was deliberately removed by the respondent/plaintiff prior to the inspection, evidently to mislead the Court. The report, being independent evidence, fully corroborates the Appellant's version and demolishes the false claim of the respondents..

E. Plaintiffs removed gate before inspection

Evidence on record shows that the plaintiffs removed the existing iron gate before the visit of the Local Commissioner, thereby



misleading the court. Such conduct disentitles them from any equitable relief of injunction.

F. No documentary proof of right over roof

There is no rent note, receipt, or document giving the plaintiffs any right over the roof or staircase. Even PW5 (plaintiff herself) admitted that no such right was ever granted. Hence, their claim of user is baseless.

G. Burden of proof not discharged

The plaintiffs/respondent failed to prove exclusive possession or right over the disputed portions. The burden to establish their entitlement to injunction was never discharged.

H. Site plan and evidence misread

The Trial Court found the defendants' site plan (Ex. DW6/1) complete and correct. The Lower Appellate Court ignored this finding and relied on an incorrect plan filed by the plaintiffs, amounting to misreading of evidence.

I. Equitable relief wrongly granted

An injunction cannot be granted against the lawful owner of property. The respondents approached the court with unclean hands, having suppressed material facts and interfered with the Appellant's ownership rights.

J. No proof of damage or interference

There is no evidence that the Appellant caused any damage to the shop or disturbed possession of the plaintiffs. Injunction based



merely on apprehension cannot be granted in law.

K. Staircase used by defendants as access to their own house.

1. Defendants' witnesses DW1, DW2, DW5, and DW6 consistently deposed that the staircase in dispute is the approach to their own residence and that they had been using it for more than 20 years

2. DW4 Satya Devi specifically confirmed that the door existed for 20-25 years and only recently (2 years prior to suit) it was removed.

3. This long and continuous usage establishes a right of ownership and enjoyment by the Appellant and negates any claim of exclusive possession by the plaintiffs.

L. Trial Court correctly applied the principles of injunction

1. The trial court rightly held that balance of convenience and irreparable injury lay in favour of the defendants.

** The gate does not affect plaintiffs' right of user, if any*

**No loss or obstruction was caused to the plaintiffs' business.*

**PW5 admitted the roof was in good condition and no damage had been caused.*

2. The injunction sought was preventive and speculative, based on apprehension rather than actual infringement.

3. Equitable relief of injunction cannot be granted to a person who is not in lawful or exclusive possession of the property in question.”

12. Learned Counsel for the respondent-plaintiffs (tenants) contends that the judgment of the First Appellate Court is correct and should not be changed, as it



rightly recognizes how the tenants have actually used the roof of the shop in possession for a long time. It is argued that the tenants, who took over from the original tenant Balwant Singh, have used the roof as a necessary part of their business for decades. They use the roof for sitting during the winter to do their work and for storing their business goods. This regular use is proven by the fact that the shop's essential equipment, such as the television antenna and the generator wires , all enter the shop through the roof. The staircase between the two shops is the only way for the tenants to reach the roof. Meanwhile, the landlord already has his own separate entrance and a different staircase at the back to get to his house. Therefore, the landlord's recent move to open a new door onto the roof is just a trick to pretend need of the staircase when he actually does not.

13. It is further argued that the landlord's plan to put an iron gate on the staircase is a malafide move intended to force the tenants out because rents in the area are going up. The tenants have a real fear that if the landlord is allowed to lock the staircase, they will have no other way to reach the roof. This would allow the landlord to secretly damage the roof to make the building look unsafe, giving him an excuse to evict them. This fear is based on the landlord's past behavior; on several occasions, he and his family have blocked the water drains on the roof during the rainy season to cause leaks and weaken the ceiling. The learned counsel emphasizes that the "balance of convenience" is on the tenants' side. Installing a gate would not only stop them from peacefully using their shop but would also give the landlord a chance to intentionally ruin the property to the tenants' disadvantage.

14. The respondents-plaintiffs' entitlement to the decree, therefore, is fully justified, and the judgment and decree passed by the First Appellate Court do not suffer from any illegality, impropriety, or perversity.



OBSERVATIONS AND FINDINGS

15. I have carefully heard learned counsel appearing for the respective parties at considerable length and have also meticulously perused the record with their able assistance. The arguments advanced by the parties have been given my thoughtful consideration, and the evidence on record has been examined in detail to ascertain the factual and legal positions necessary for adjudication of the present appeal.

16. At the outset, it is necessary to draw a clear distinction between a ‘right of user’ and premises forming part of the demised tenancy. The case set up by the plaintiffs, as borne out from the pleadings, is not that the roof or staircase constituted part of the tenanted premises, but only that they were permitted to use the same. A permissive or incidental user, even if continued for a long period, does not ipso facto ripen into a legal or proprietary right, nor does it convert such area into part of the tenancy unless exclusive possession and contractual entitlement are specifically pleaded and proved. Mere long or convenient user, in the absence of a clear covenant or proof of exclusive possession, cannot enlarge the scope of the tenancy or derogate from the ownership rights of the landlord.

Right of User and Part of Tenancy

17. The plaintiffs in the plaint have specifically pleaded that “they were having a **right of user** of the first floor of the said shop after passing through the staircase to its west” and that “the plaintiffs are at present running the business of a beauty parlour in the shop in dispute. They also **enjoy and use** the staircase for going to the roof of the shop, where they put their articles in the sun and also sit there during winter’. These pleadings were also reproduced by the Trial Court in its judgment. It was not the pleading of the plaintiffs that the staircase and roof formed part of the tenancy. Their case is confined to a claim



of right of user of the roof. It is also not the case of the appellant-defendants that the roof and staircase were let out as part of the tenancy.

18. Admittedly there is no written rent agreement on file regarding the tenancy of the shop and right of the plaintiffs to use the roof as well as staircase. The plaintiffs' witness no 2, 3 and 4 all stated that roof was used by the plaintiffs for sitting in the sun, reading newspapers etc. PW-5 (respondent-plaintiff No.2) herself stated that she uses the roof for drying towels. The material aspect is that while the witnesses spoke about user of the roof for different purposes, none stated that it formed part of the tenancy or that it was under the exclusive possession of the respondents-plaintiffs.

19. The Plaintiffs' witnesses only deposed regarding the user of roof of the disputed shop. The shop in dispute was not leased out in their presence and their testimonies, in the normal course, is insufficient to conclude that the roof and staircase formed part of the tenancy unless it is shown that they were present when the terms of the lease were settled between the parties.

Staircase

20. The respondents-plaintiffs, in their replication, asserted that 'the staircase also forms part of the tenancy of the plaintiffs with **joint user** of the same along with **other tenant**' and that 'the staircase was meant for use of the **tenants**'. This admission clearly shows that the staircase was for joint user and not in the exclusive possession of the respondents-plaintiffs. The staircase is common to two rented shops and opens directly from the road, and not from inside the plaintiffs' shop as can be seen from the site plan. It was also not their case that they ever exercised exclusive control by locking the staircase so as to exclude others. Hence, the staircase cannot be construed as forming part of the tenancy.

It is settled law that an admission is the best evidence against the maker. This admission reinforces that the plaintiffs' case never travelled beyond a claim of



user and falls short of asserting any tenancy right over the staircase.

Local Commissioner Report.

21. The relevant part of the Local Commissioner's report says:

*“So far as the staircase is concerned, an **iron gate was there** in the stair case. However, it was in a loose condition. There were two holes 3" x 3" in the wall of the shop situated on the western side of the shop in dispute. The condition of these holes shows that in fact **earlier the gate was fixed on the staircase**” and “so far as roof of the shop in dispute is concerned, that is **plastered**”*

22. The Commissioner's report leads to these clear conclusions:

A. Evidence of Prior Existence of Gate:

The presence of holes in the wall corroborates the defence version that an iron gate had earlier existed at the staircase.

B. Nature of Staircase:

The report supports the inference that the staircase was treated as a controlled access and not as an open or exclusive tenant passage.

23. The holes found in the wall clearly suggest that a gate had existed at the staircase earlier, thereby contradicting the tenants' assertion that the landlord was attempting to introduce a new obstruction. The Local Commissioner's report also stands corroborated by the oral evidence on record. PW-6 Shri Sukhdeep Singh, son of Balwant Singh, in his cross-examination, has admitted that there was one hook and one hole at the spot. This admission lends further support to the defence version that a gate had earlier existed at the staircase and that the landlord was not creating a new obstruction, but was merely seeking to restore or regulate access which had previously been controlled.



Burden of Proof

24. The relevant findings recorded by the First Appellate Court read as under:

*“At this stage, evidence of the parties shows that there is no gate to the staircase. Then question is whether owner of the house can be allowed to affix gate in front of the staircase. **No authority has been cited by counsel for Inder Mohan Bhalla to the effect that roof of the shop is not part of the tenancy.** Position becomes otherwise if there is a construction on the first floor or there is a rent note and in the rent note, there is a recital that roof is to be used by the owner and not by the tenants. In this case, there is no written rent note. **As per law, tenant is to use the roof and to use the roof there is a staircase.**”*

25. Sections 101 and 103 of the Indian Evidence Act, 1872, lay down the settled rule regarding burden of proof. Under Section 101, whoever desires the Court to give judgment as to any legal right dependent on the existence of facts asserted by him must prove those facts. Section 103 further clarifies that the burden of proving any particular fact lies on the person who wishes the Court to believe in its existence.

26. Applying the above principles, the burden squarely lay upon the respondents-plaintiffs (tenants), who instituted the suit seeking a decree of permanent injunction. Since it was the plaintiffs who asserted a right over the roof and staircase, it was incumbent upon them to prove that such areas formed part of the tenancy or that they had a legally enforceable right therein.

27. The First Appellate Court, however, proceeded on an erroneous legal premise by observing that **no authority had been cited by Inder Mohan Bhalla (landlord) to show that the roof was not part of the tenancy.** This



approach effectively shifted the burden of proof upon the appellant-defendants and required them to disprove a claim which was never established by the plaintiffs in the first place. Such an approach is contrary to the settled principle that a party asserting a right must prove it, and the opposite party cannot be compelled to prove a negative fact.

28. The finding of the First Appellate Court that **“as per law, tenant is to use the roof and to use the roof there is a staircase”** is wholly unsustainable in law and on facts. There is no legal presumption that a tenant is entitled to use the roof merely by virtue of being a tenant of the shop. A tenant’s rights are strictly confined to the demised premises. Any right to use of the roof or staircase must be specifically pleaded and proved to be part of the tenancy. In the present case, neither the pleadings nor the evidence establish that the roof or staircase formed part of the tenancy. Mere existence of a staircase or long user of the roof does not create a tenancy right. Such an assumption amounts to a finding based on presumption rather than evidence and is therefore perverse.

29. In the absence of any rent note, documentary evidence, or proof of exclusive possession, the claim of the plaintiffs could not have been accepted merely on the basis of user. The First Appellate Court, therefore, fell into a legal error in presuming a tenancy right over the roof and staircase without the plaintiffs having discharged their burden of proof as mandated under the Evidence Act.

Analysis of Balance of Convenience and Irreparable Loss

30. The grant of a permanent injunction is a discretionary and equitable relief governed by the Specific Relief Act, 1963. It is a settled legal proposition that even for such relief, the Court must be satisfied that the plaintiff establishes a prima facie legal right, that the balance of convenience lies in his favour, and



that denial of relief would result in irreparable injury.

31. The First Appellate Court failed to appreciate that the balance of convenience does not favour a tenant seeking to restrain the landlord from securing a common access point. Preventing the owner from installing a gate for security purposes, particularly when the staircase is external and meant for joint use, causes greater hardship to the owner than any alleged inconvenience to the tenant.

32. In the present case, the respondents-plaintiffs have failed to establish even a prima facie legal right to restrain the appellants-defendants from affixing a gate on the staircase. As already discussed, the staircase does not form part of the tenancy and is, at best, a common access. In the absence of any pleading or proof that the staircase was let out as part of the tenancy or was under the exclusive possession of the plaintiffs, no enforceable legal right is shown to exist. Consequently, the foundational requirement for grant of injunction - the existence of a prima facie case, remains wholly unfulfilled.

33. As regards the relief restraining the appellants-defendants from causing damage to the shop in possession of the respondents-plaintiffs, the same stands on an entirely different footing. The tenancy of the respondents-plaintiffs in respect of the ground floor shop is admitted and undisputed. Protection of a tenant's lawful possession of the demised premises against unlawful interference or damage by the landlord is a well-recognised legal principle. Since the respondents-plaintiffs are in settled possession of the shop and the appellants-defendants have no right to cause damage thereto during the subsistence of tenancy, the grant of a limited injunction to that extent is justified. This relief does not flow from any presumed right over the roof or staircase and, therefore, does not conflict with the findings recorded hereinabove.



34. In view of the above discussion, the present Regular Second Appeals are **partially allowed**. The judgment and decree of the First Appellate Court dated 21.04.1997 is modified and substituted in the following terms:

- (i) **Regarding the Staircase/Gate:** The decree of permanent injunction restraining the Appellants-Defendants from affixing a gate/shutter on the staircase is hereby set aside.
- (ii) **Regarding Damage to the Shop:** A decree of permanent injunction is hereby passed in favor of the Respondents-Plaintiffs, restraining the Appellants-Defendants from causing any damage to the shop in possession of the Respondents-Plaintiffs so long as the tenancy subsists.

35. Since the main appeal stands decided, all pending miscellaneous application(s), if any, shall also stand disposed of. Decree sheet be prepared accordingly.

36. A copy of this judgment be placed on connected file for compliance (if any) and for ready reference.

29.01.2026
Poonam

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No