



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

RSA-254-1998 (O&M)

Reserved on :- 03.02.2026

Date of Pronouncement:-11.02.2026

Uploaded on:-12.02.2026

Karambir

... Appellant

Versus

Naurang and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Nonish Kumar, Advocate
for the appellant.

Mr. Ajay K. Yadav, Advocate for
Mr. R.N. Loha, Advocate
for respondent No.1.

VIRINDER AGGARWAL, J.

1. The appellant-defendant hereby impeaches the legal tenability of the judgment and decree dated 05.09.1997 rendered by the learned Additional District Judge, Jind, which summarily over-set the well-founded adjudication of the learned Trial Court dated 16.08.1994. It is respectfully submitted that the findings of the learned First Appellate Court are fundamentally unsustainable, as they ignore the weight of evidence that bolstered the learned Trial Court's conclusions. The Appellant, therefore, seeks the intercession of this Court to rectify this legal infirmity and restore the decree of the Court of first instance.



2. To appreciate the controversy in its correct perspective, the background facts and the chronology of events preceding this appeal are summarized as under:-

“The plaintiff seeks a permanent injunction to restrain the defendants from interfering with a two-karam wide private path. The plaintiff alleges that the path was provided by the defendants' father (the vendor) during a 1962 land sale. He claims continuous usage since then and seeks to prevent the defendants from alienating the land or obstructing the path's enjoyment.”

3. The suit is contested solely by Defendant No. 4, who categorically denies the existence of the alleged path. The answering defendant further disputes that any such easement was provided by Chandgi to the plaintiff or proforma defendants, specifically denying their continuous usage or the existence of a right of way as pleaded.

4. With a view to channelizing the trial toward a definitive resolution, the learned Trial Court, having perused the respective stands of the parties, formulated the following triable issues vide its order dated 08.05.1992:-

1. *Whether the plaintiff is entitled for the relief of injunction as prayed for ?OPP*
2. *Whether the suit is not maintainable in the present form ?OPD.*
3. *Whether the plaintiff has no cause of action ?OPD.*
4. *Whether the plaintiff has no locus-standi to file the present suit ?OPD.*
5. *Whether the suit is bad for non-Joinder and mis-joinder of necessary parties ?OPD.*



6. *Relief.*

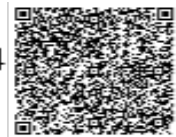
5. Following the exhaustive adduction of evidence and the subsequent exchange of final arguments, the learned Trial Court scrutinized the competing versions of the parties through a discerning lens. Concluding that the plaintiff failed to discharge the requisite burden of proof, the learned Trial Court **dismissed** the suit, articulating its rationale through the following findings and observations:-

*“In light of the exhaustive discussion and findings rendered on the respective issues, the plaintiff’s suit is found to be devoid of merit and fails to survive judicial scrutiny. Consequently, the suit stands **dismissed with costs.**”*

6. The defendants, seeking the reversal of the Trial Court’s adjudication, preferred a statutory appeal before the learned First Appellate Court. After an exhaustive appraisal of the competing submissions, the Lower Appellate Court concluded that the findings under challenge warranted judicial interference. Consequently, the appeal was **allowed**, with the Court recording its observations in the following terms:-

*“In view of the findings recorded above, the appeal is **allowed with costs.** The impugned judgment and decree are set aside, and the suit is decreed. Accordingly, the defendants (excluding the proforma defendants) are permanently restrained from interfering with the plaintiff’s and proforma defendants’ use and enjoyment of the suit path.”*

6.1. Calling into question the legal tenability of the decree rendered by the learned First Appellate Court, the appellant has preferred the instant RSA. Following the service of notice, respondent No. 1 entered appearance through counsel to defend the impugned judgment. To



facilitate a comprehensive and judicious determination of the *lis*, the record of the proceedings from the learned Courts below was requisitioned and has been subjected to an exhaustive and meticulous examination by this Court.

7. Submissions have been heard. Upon a holistic appreciation of the evidence and a thorough examination of the records requisitioned from the learned Courts below, I have considered '*whether the impugned judgment and decree is sustainable in the eyes of law or if they suffer from a manifest error that justifies interference in the exercise of this Court's appellate jurisdiction.*'?

8. 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.

9. At the outset, learned counsel appearing for the appellant assailed the impugned judgment and decree on the ground that the learned lower Appellate Court failed to properly appreciate the pleadings and evidence on record and erred in placing reliance upon the oral testimonies of PW-1 and PW-2 to conclude that a passage had been left in favour of the



respondent-plaintiff over the suit land. It was contended that such findings are perverse and unsustainable in law, warranting interference by this Court as it amounts to misreading of evidence, and accordingly prayed that the appeal be allowed and the impugned findings be set aside. Per contra, learned counsel for the respondent-plaintiff submitted that the findings recorded by the courts below suffer from no illegality or infirmity. It was urged that the respondent-plaintiff had purchased the property from the previous owner along with an appurtenant right of passage, which has been rightly acknowledged and affirmed by the learned First Appellate Court. On these premises, it was prayed that the appeal be dismissed and the judgment and decree passed by the learned First Appellate Court be upheld.

10. At the threshold, it is apposite to note that while adjudicating Issue No.1, the learned Trial Court returned a categorical finding that the plaintiff and PW-2 had deposed to the effect that the plaintiff and the proforma defendants were owners in possession of Killa No.108//2/1, by virtue of sale deed Ex.P-3, and that a Path measuring two karams in width existed on the western side of Killa No.108/2, having been left by Chandgi, father of defendants No.1 and 2, at the time of sale in the year 1962. However, the learned Additional Senior Sub-Judge observed that sale deed Ex.P-3 did not contain any specific or unambiguous recital indicating the precise side of Killa No.108/2 on which such passage was stated to have been left.

10.1. On the other hand, the defendants adduced oral evidence asserting their ownership and possession over Killa No.108/2 and

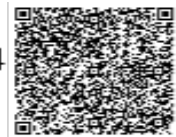


categorically denied the existence of any path on its western side. It was further brought on record that Karambir Singh and others had purchased Killa No.108/2 vide registered sale deed Ex.D-1, which stood duly proved through the testimony of Bhagwan Das, the scribe thereof. In support of their claim, the defendants also produced the Jamabandi, Ex.D-3. Upon consideration of the aforesaid material, the learned Additional Senior Sub-Judge recorded a clear finding that the plaintiffs had failed to establish the existence of any path on the western side of Killa No.108/2.

10.2. The learned First Appellate Court, however, reversed the said finding on Issue No.1, primarily on the premise that oral evidence had been led to demonstrate the existence of a passage provided towards the western side of Killa No.108/2. In paragraph 8 of the impugned judgment, the learned Additional District Judge, Jind, held as under:-

“Since, it is not categorically mentioned in the sale deed P3 as to on which side of Killa No.108/2, the passage was provided, the oral evidence must be read in conjunction with P3. The plaintiff appearing as PW-1 and Mahendra Singh as PW-2 have both categorically stated that passage in question is towards the western side of aforesaid Killa number and is being used continuously by the plaintiff etc. The plaintiff has reiterated his stand in the cross-examination that the passage is towards the west. It has also come in evidence that there is no other passage available to him, as is also admitted by defendants and his witnesses.”

11. At the very outset, it warrants emphasis that the learned First Appellate Court failed to take due note of the registered sale deed Ex.D-1, through which the appellant-defendant conclusively established their



ownership and possession of Khasra No.108/2, coupled with the absence of any passage traversing the said land. The evidence adduced by the appellant-defendant was erroneously brushed aside on the premise that there were no pleadings to that effect, despite the fact that the written statement contains an explicit and unequivocal assertion that no path exists on the western side of Killa No.108/2 and that defendants No.1 to 4 are the owners in possession thereof. In the face of such clear pleadings, the non-consideration of the sale deed executed in favour of the appellant-defendants constitutes a manifest error on the part of the learned First Appellate Court.

11.1. Further, the learned First Appellate Court ignored legally admissible and duly tendered evidence which was in complete consonance with the pleadings of the appellant-defendants. In terms of such pleadings, the appellant-defendants successfully proved on record that they are the owners of the entirety of Khasra No.108/2 and led cogent oral evidence to establish that no *Rasta* exists over their land. The reversal of the well-reasoned findings recorded by the learned Trial Court, solely on the basis of the oral testimony of the respondent-plaintiff after ignoring the evidence of appellant-defendant on wrong premise, thus amounts to a clear misreading of evidence. The learned First Appellate Court appears to have been unduly influenced by the consideration that no passage was available to the respondent-plaintiff, who had purchased his land vide sale deed Ex.P-3.

11.2. While it may be true that the respondent-plaintiff requires access to his land, the suit instituted by him was one for permanent



injunction simpliciter and not a suit seeking a declaration of any easementary or proprietary right. Once it stands established from Ex.D-1 that Khasra No.108/2 is owned by the appellant-defendants, the respondent-plaintiff cannot, in law, claim any right to use the same as a passage. In such circumstances, the learned Trial Court had rightly concluded that no case was made out in favour of the respondent-plaintiff.

11.3. Consequently, the findings recorded by the learned First Appellate Court are vitiated by misreading of evidence, inasmuch as legally admissible material evidence was wrongly ignored to reverse the findings on Issue No.1 an exercise impermissible in law. Accordingly, the findings on Issues No.1 and 2 as returned by the learned First Appellate Court are unsustainable and are hereby set aside. The appeal preferred by the appellant-defendants is **allowed**; the judgment and decree passed by the learned First Appellate Court are set aside, and those rendered by the learned Trial Court are restored.

12. In view of the conclusive adjudication of the substantive controversy, all pending miscellaneous applications, if any, are rendered infructuous and shall stand disposed of by operation of this judgment. Given that the primary *lis* has reached its legal quietus, any subsidiary prayers for interim relief have been denuded of their vitality and require no independent determination, as they have been effectively preempted by the resolution of the main appeal.

(**VIRINDER AGGARWAL**)
JUDGE

11.02.2026
Gaurav Sorot

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

GAURAV SOROT
2026.02.12 14:31
I attest to the accuracy and
integrity of this document