



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4606-1999 (O&M)

SURTA

. . . . Appellant

Vs.

KAPOOR SINGH AND OTHERS

. . . . Respondents

Reserved on: 24.02.2026

Pronounced on: 27.02.2026

Pronounced Fully/Operative Part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Kulvir Narwal, Advocate, for the appellant.

Mr. Sushil Sheoran, Advocate, for the respondents.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been preferred by one of the defendants in Civil Suit No.111 of 1994 (who was also the plaintiff in Civil Suit No.916 of 1995), assailing the judgment and decree passed by the first Appellate Court, whereby the suit of plaintiff Kapoor Singh for permanent injunction was decreed, and the suit of the present appellant for mandatory injunction was dismissed.

Factual Matrix :

2. Plaintiff Kapoor Singh instituted Civil Suit No.111 of 1994 seeking a decree of permanent injunction against defendants Surta, Sukhbir and Subhash in respect to the portion marked OPCQ in the site plan appended with the plaint. The plaintiff pleaded that the said portion was a *gali* (passage) left for common use at the time of ancestral partition and that doors of his house opened towards the said passage. Alleging interference and attempted encroachment by the defendants, he sought decree of permanent injunction against obstruction and against closure of the doors marked X and Y.

3. The defendants contested the suit by denying the alleged partition and the existence of any passage. According to them, the disputed portion formed part of their property obtained in oral exchange from Mir Singh and that only a blind lane existed towards the northern side. They further asserted that the plaintiff had no right to keep openings towards the disputed land.

4. The defendants also filed Civil Suit No.916 of 1995 seeking mandatory injunction directing Kapoor Singh to close the openings marked X and Y and to restrain him from opening any door or window towards the eastern side of his house, reiterating that the disputed property formed part of their residential house.

5. Both suits were consolidated and Civil Suit No.111 of 1994 was treated as the main case. The trial Court framed consolidated issues regarding entitlement to permanent injunction, entitlement to mandatory injunction, locus standi, maintainability, estoppel and relief.

6. ***Findings of the Trial Court*** : Upon appreciation of the evidence, the trial Court dismissed the suit filed by Kapoor Singh, and decreed the suit filed by the present appellant vide common judgment dated 11.11.1998. The trial Court held that the plaintiff failed to prove that the disputed portion was a *gali* or was left for common use. The Court also noticed non-examination of the draftsman of the site plan and relied upon admissions regarding existence of defendants' property towards the eastern side.

7. ***Findings of the First Appellate Court*** : Aggrieved, Kapoor Singh preferred Civil Appeal No.282 of 1998. The first Appellate Court re-appreciated the evidence and reversed the findings of the trial Court vide judgment dated 23.10.1999. The Appellate Court relied upon admissions of defendants' witnesses regarding relationship between the parties, ancestral partition, construction of plaintiff's house about two decades earlier, and existence of openings at points X and Y being used by the plaintiff. It was held that the existence of the passage marked OPCQ stood established through oral evidence and admissions of defence witnesses. Consequently, the Appellate Court decreed the suit for permanent injunction filed by Kapoor Singh, and dismissed the suit for mandatory injunction filed by the present appellant.

Submissions of the Parties

8.1 Assailing the reversal, learned counsel for the appellant contends that the Appellate Court erred in interfering with well-reasoned findings of fact recorded by the trial Court and that the re-appreciation of evidence was unwarranted.

8.2 It is further argued that since the appellant's suit for mandatory injunction had been decreed by the trial Court and no independent appeal was filed against that decree, the said findings attained finality and operated as *res judicata*. Reliance has been placed upon ***Sri Gangai Vinayagar Temple vs. Meenakshi Ammal, 2015 (2) SCC (Civil) 350.***

9. *Per contra*, learned counsel for the respondents submits that the judgment and decree of the trial Court was composite in nature governing both suits and that the entire controversy stood reopened in the appeal filed by Kapoor Singh. It is thus argued that no separate appeal was required.

Consideration by the Court

10. This Court has considered the rival submissions and carefully perused the record.

11. The argument of *res judicata* raised by the appellant is devoid of any merit. The record clearly reveals that the trial Court passed a composite judgment and decree deciding both the suits together. The first Appellate Court also passed a composite decree reversing the findings.

12. Once a composite decree is challenged in appeal, the entire controversy becomes sub judice before the Appellate Court. The principle laid down in ***Sri Gangai Vinayagar Temple (supra)*** applies to situations involving independent decrees attaining finality. The said ratio is inapplicable, where a common judgment and decree governs cross suits arising out of the same cause of action.

13. Consequently, Kapoor Singh was not required to file a separate appeal against dismissal of the appellant's suit, as the rights of the parties were inseparably interconnected.

14. The core controversy pertains to existence of a passage and user thereof, the issues which are purely factual in nature.

15. The first Appellate Court, being the final Court of fact, was fully competent to re-appreciate the evidence. The Appellate Court recorded findings on the basis of admissions of defence witnesses, long user of openings, and acknowledgement of ancestral partition.

16. No perversity, misreading of evidence or application of wrong legal principle has been demonstrated so as to warrant interference under Section 100 CPC.

17. It is well settled that where the first Appellate Court, upon proper appreciation of evidence, reverses the findings of the trial Court, such findings cannot be interfered with in second appeal unless shown to be perverse or based on no evidence.

18. The submissions raised by the appellant merely seek re-appreciation of evidence and reassessment of factual findings, which is impermissible within the limited jurisdiction of this Court under Section 100 CPC. No substantial question of law arises for consideration.

19. **Conclusion :** In view of the above discussion, this Court finds no illegality or perversity in the judgment and decree passed by the first Appellate Court.

20. The Regular Second Appeal is accordingly dismissed, with no order as to costs.

(DEEPAK GUPTA)
JUDGE

27.02.2026
Vivek

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>

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