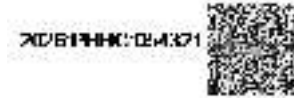


RSA-3294-2023 (O&M)



RSA-1243-2024 (O&M)

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

Date of decision : 19.03.2026

**CM-11764-C-2023 in/and
RSA-3294-2023 (O&M)**

Balbir Kaur & ors.

..... Appellants

Versus

Usha Mittal & ors.

..... Respondents

**CM-4871-C-2024 in/and
RSA-1243-2024 (O&M)**

Balbir Kaur & ors.

..... Appellants

Versus

Usha Mittal & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Nandan Jindal, Advocate
for the appellants.
(in both appeals).

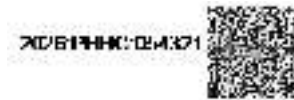
PANKAJ JAIN, J. (ORAL)

CM-11764-C-2023 in RSA-3294-2023

This is an application seeking condonation of delay of 29 days in re-filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants-appellants have shown sufficient cause to condone the delay in re-filing the appeal.

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Application is allowed. Delay of 29 days in re-filing the appeal is condoned.

CM-4871-C-2024 in RSA-1243-2024

This is an application seeking condonation of delay of 181 days in re-filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants-appellants have shown sufficient cause to condone the delay in re-filing the appeal.

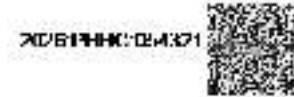
Application is allowed. Delay of 181 days in re-filing the appeal is condoned.

Main cases

1 By way of instant order, I intend to dispose off afore captioned two appeals arising out of suit and counter claim. Appellants-defendants are in appeal. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellants as defendants and the respondents as plaintiffs.

2 Plaintiffs filed suit seeking decree of permanent injunction against the defendants from demolishing wall described as “A” “B” as depicted in the site plan appended to the plaint. As per the plaintiffs, they purchased 1 kanal 8 marlas, i.e. 830 Sq. Yards of land vide registered sale deed dated 15.11.2002. They constructed a workshop over the land which is now part of New Punjabi Bagh Colony. A wooden gate was affixed at point “C” “D”. The passage starting from the entry gate “C” “D” ends at blind lane

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“A” “B”. The area falls within the ownership of the plaintiffs. Defendants who have a separate plot in an adjoining colony named as Punjabi Bagh Colony, Nabha and have a separate entry to their plot are trying to dismantle the wall shown as “A” “B” without having any right, title or interest.

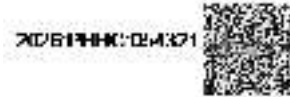
3 Suit was contested by the defendants. Defendants No.1 & 2 disputed ownership of the plaintiffs over 1 Kanal 8 Marlas of land. As per the defendants, plaintiffs purchased 600 sq. yards of land and the disputed property is situated in Punjabi Bagh Colony, Nabha. As per the defendants there is no wooden gate at point “C” “D” as claimed by the plaintiffs. The passage in question is a public street which is to be used by public at large and the plaintiffs cannot claim ABCD as a private passage.

4 Defendants filed counter claim seeking decree of mandatory injunction directing plaintiffs to remove wall and iron gate. As per defendants, they are owners in possession of 13 Marlas of land under sale deed dated 28.01.2011. Plaintiffs along with one Deepak Mittal purchased 1 Kanal 8 Marlas of land. After purchase of land, defendants constructed a boundary wall and were using both the passages for ingress and egress. Plaintiffs want to encroach upon a street on the western side of the plot of the defendants. Plaintiff No.3 illegally and forcefully constructed wall which needs to be removed.

5 On the basis of the pleadings, the Court of the First Instance framed following issues :-

“Issue No.1. Whether the plaintiffs are entitled to relief of permanent injunction, as prayed for? OPP

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Issue No.2. Whether the suit of the plaintiffs is bad for non-joinder of necessary parties? OPD.

Issue No.3. Whether the suit of the plaintiffs is false, frivolous and vexatious to the knowledge of the plaintiffs? OPD.

Issue No.4. Whether the plaintiffs have no locus-standi or cause of action to file the present suit? OPD.

Issue No.5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

Issue No.6. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.

Issue No.7. Whether the suit of the plaintiffs is false, frivolous and vexatious to the knowledge of the plaintiffs? OPD.

Issue No.8. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from this Court? OPD.

Issue No.9. Relief.

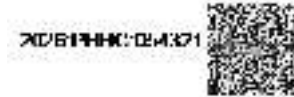
Following additional issues were framed:-

Additional Issue No.1. Whether the defendant Nos. 1&2 are entitled to their counter claim of mandatory injunction and permanent injunction, as claimed? OPD.

Additional Issue No.2. Whether the counter claim of defendant Nos. 1 and 2 is not maintainable? OPP.”

6 Answering issue No.1 in favour of the plaintiffs, the Court held that the plaintiffs successfully proved their possession over the land in question. It stands proved that houses of the parties are in different colonies. DW1 Baljit Singh admitted in his cross examination that at the time the defendants purchased plot, the two colonies, i.e New Punjabi Colony and Punjabi Bagh Colony were in existence. The defendants having admitted of the wall and having led no evidence to prove that the passage is a public street, the Court of First

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Instance decreed the suit filed by the plaintiffs and dismissed the counterclaim preferred by the defendants.

7 Defendants preferred two separate appeals. The Lower Appellate Court dismissed both the appeals affirming the findings recorded by the Court of First Instance. Learned counsel for the appellants has assailed findings recorded by the Courts below. It has been contended that the Courts below have been wrongly swayed away by admission on part of the defendants regarding existence of wall at point “A” “B” and have totally ignored the case pleaded by the defendants that the said wall was raised during the pendency of the suit.

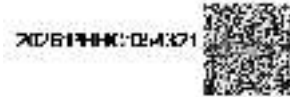
8 I have heard learned counsel for the appellants and have gone through the records of the case.

9 In the considered opinion of this Court, the fate of the *lis* hinges upon :-

“Whether the property in dispute marked as ABCD in the site plan appended to plaint is a public street or not.”

10 Plaintiffs claimed the same to be a private street under their control. It has been claimed by them that they installed a wooden gate at point “C” “D”. The passage starting from “C” “D” leads to dead end “A” “B”. The plaintiffs claimed that the said passage is a part of their property which was purchased vide sale deed dated 15.11.2002 and is part of land owned by them admeasuring 1 kanal 8 marlas. Defendants in the written statement denied the said fact. Plaintiffs proved sale deed dated 31.10.2002 (Ex PA). By filing

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counterclaim defendants admitted that the land was in possession of the plaintiffs and the plaintiffs have raised wall at point “A” “B” and has installed gate at point “C” “D”. Trial Court rightly held that in the absence of there being any declaration sought by either of the parties, the Court is not required to go into the question regarding ownership of passage. Once it stands proved that the plaintiffs are in possession of the passage ABCD, onus was upon defendants to prove that the same was a public street.

11 Section 2 (38) of the Punjab Municipal Corporation Act, 1976 (for short, ‘the 1976 Act’) defines “private street”. Section 2 (43) defines “public street’. The provisions read as under :-

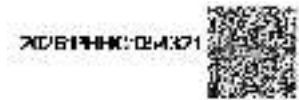
2 (38) "private street" means any street, which is not a public street and includes any passage securing access to two or more places belonging to the same or different owners;

2 (43) "public street" means any street which vests in the Corporation as a public street or the soil below the surface of which vests in the Corporation or which under the provisions of this Act becomes or is declared to be, a public street;

12 In view of afore reproduced provisions, every street cannot be said to be a ‘public street’. For a street to be termed as ‘public street’ either the same should vest in Municipal Corporation or there should be a declaration to the said effect under the provisions of the 1976 Act.

13 Defendants failed to lead any evidence to show that the passage in dispute is a public street. It being an admitted fact that the passage in dispute is in possession of the plaintiffs, this Court finds no reason to interfere

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in the findings accorded by the Courts below. That apart, it is an admitted fact that both the parties own their properties in different colonies. Defendants have a separate street leading to their property and thus it is not a case wherein defendants can claim right of easement.

14 In view of aforesaid facts, this Court finds no merits in the present appeals. The same are ordered to be dismissed.

15 Pending miscellaneous application, if any, also stands disposed off.

16 Photocopy of this order be placed on the connected file.

19.03.2026
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No