

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

**RSA No.1132 of 2012 (O&M)
Date of Decision : 24.03.2026**

Prem Nath Bhandari (deceased) through his LR

....Appellant

Versus

Pawan Malhotra and another

.....Respondents

CORAM: HON'BLE MR JUSTICE PANKAJ JAIN

Present: Ms. Parul Saini, Advocate
for the appellant.

Mr. Varun Sharma, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

CM No.10603-C of 2016

This is an application filed under Order I Rule 10 CPC for
impleading Meenu Aggarwal as respondent No.3 in the array of parties.

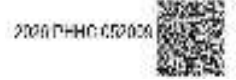
Notice of the application.

Ms. Parul Saini, Advocate accepts notice on behalf of the non-
applicant/appellant and pleads no objection.

For the reasons recorded in the application, the same is allowed.

Meenu Aggarwal is impleaded as respondent No.3 in the array of parties.

Amended memo of parties is taken on record. Registry to tag
the same at appropriate place.



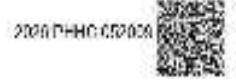
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Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position before the Court of First Instance, i.e., the appellant as plaintiff and the respondents as defendants.

3.1. Plaintiff filed suit seeking decree of mandatory injunction against the respondents/defendants directing them to remove illegal construction raised by them a month prior to the institution of the suit in a private street.

3.2. As per the plaintiff, his father Jamna Dass Bhandari purchased the property by way of registered sale deed way back on 05.03.1933 from Lala Ram Rattan. Jamuna Dass left an area of 2 ft. wide abutting the building on the Northern Side. His neighbour also contributed an area along with his building measuring 1½ ft. wide which led to creation of a private street measuring 3 ft and 9 inches. The said *rasta*/private street is in existence since then. Plaintiff is an old person. He had gone to his relatives. Upon his return, he was shocked to discover that defendants had constructed a staircase in the private street and has also constructed two small rooms on the first floor. By raising construction, defendants have not only blocked the window of the house of the plaintiff opening towards private street, but have also blocked his ingress and egress to the private street. By instituting the present suit, plaintiff seeks mandatory injunction against the defendants seeking removal of the construction raised by them in the said private street.



4. Suit was contested by the defendants.

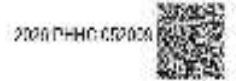
4.1. Defendant No.1 in his written statement claimed that the staircase is in existence for more than 15 years. Defendant No.1 was let out a shop on rent by one Deep Singh in the year 1989. The staircase is in existence prior thereto. Plaintiff never had any excess to the staircase. The shop in question was purchased by Rohit Kumar and defendant No.1 is the tenant under Rohit Kumar. Street is not part of property of the plaintiff as claimed. No construction was raised by the defendant ten days prior to the institution of the suit as claimed by the plaintiff.

4.1. In a separate written statement, defendant No.2 claimed that the private street is under ownership of defendant No.2 and the plaintiff has no right, title or interest over the same.

5. Suit filed by the plaintiff was put to trial by the Court of the First Instance, framing following issues:

- “1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether no cause of action has arisen to the plaintiff? OPD
4. Whether plaintiff has got no right, title or concern in the private street? OPD.
5. Relief.”

6. The Court of the First Instance after analysing evidence on record found that the plaintiff failed to establish that the land on which the

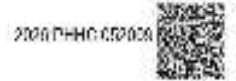


staircase/alleged illegal construction was raised jointly left by his father and the other neighbour in the year 1933. No declaration to the effect that 3 ft. 6 inches passage running alongside the building is a joint passage has been sought in the suit. The Trial Court further relied upon the report of Local Commissioner, Exhibit P-1, to conclude that the staircase claimed to be a recent construction is in fact an old construction and that the passage is in exclusive control of the defendants. The plaintiff having failed to prove that the land beneath the common construction was a common private street as alleged, the Trial Court dismissed the suit preferred by the plaintiff.

7. Unsuccessful plaintiff preferred appeal.

8. Ld. Lower Appellate Court affirmed the findings recorded by the Court of the First Instance holding that the plaintiff claims his ownership right over the street in question, but has failed to prove the same. The claim of the plaintiff that the construction was recently raised also stands falsified from the report of the Local Commissioner. The appeal filed by the plaintiff was accordingly, dismissed.

9. Ld. Counsel for the appellant has assailed the judgment and decree passed by the Courts below claiming that from the perusal of the sale deed it is apparent that the property sold to respondent/defendant was a single storey. The same did not mention any staircase towards the Southern side. The common private passage cannot be allowed to be altered and usurped by the defendants for constructing staircase to the peril of the rights

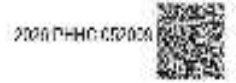


of the plaintiff. She thus submits that it is a case of misleading and misappreciation of evidence on record.

10. I have heard counsel for the parties and have carefully gone through records of the case.

11. The entire suit of the plaintiff hinges upon his claim that the passage measuring 3 ft. 9 inches wide is a private street which was carved out by a common construction made by predecessor-in-interest of the plaintiff as well as the defendants. Apart from a bald assertion made by the plaintiff, there is no evidence to prove the same. The plaintiff claims that the construction was raised just ten days prior to filing of the suit. The Court of the First Instance appointed Local Commissioner. She was examined as PW-1. She proved her report as Exhibit P1. It stands proved on record that the staircase from ground to first floor was in existence much prior to filing of the suit and is an old construction. The plaintiff never objected to the construction of staircase for almost 15 years. There is an iron gate on the Western side of the disputed private street installed by the defendants. There is no window of the house of the plaintiff which opens towards the disputed common street. Rain water outlets are not under threat by the construction raised. It is in these circumstances that the Courts below returned pure finding of fact against the plaintiff.

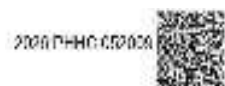
12. There being no question of law involved in the present appeal, this Court finds no reason to interfere in the second appeal.



13. Scope of second appeal under Section 41 of the Punjab Courts Act, 1918 came up for consideration before Apex Court in **Randhir Kaur Versus Prithvi Pal Singh & Ors. 2019(17) SCC 71** wherein it was held as under:

“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in *Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85* set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya [AIR 1959 Supreme Court 57.]**, **Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.]**, **Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.]** and **Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142: AIR 1976 Supreme Court 163.]**. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the



only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

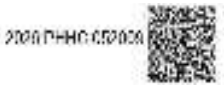
14. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732** as under :

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17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have



failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

- 15. In view of afore-said ratio of law, finding no merit in the present appeal, the same is ordered to be dismissed.
- 16. Pending application(s), if any, shall also stand dismissed.

March 24, 2026		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No