



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-5003-2017 (O&M)

Date of decision: 10.02.2026

Pawan Kumar

...Appellant(s)

Vs.

Hukam Chand

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Robin Dutt, Advocate for the appellant.

Mr. Manoj Sharma, Advocate and
Ms. Anavi Parnami, Advocate for the respondent.

NIDHI GUPTA, J.

Defendant is in Second Appeal against the concurrent judgments and decrees of the learned District Courts; whereby suit of the respondent/plaintiff for permanent and mandatory injunction, was partly decreed by the learned Trial Court; and was decreed in toto by the learned First Appellate Court in the Civil Appeal filed by the plaintiff.

2. Brief facts of the case are that the respondent/plaintiff had filed a suit seeking a decree of permanent injunction restraining the defendant from interfering in the passage comprised in khasra No.96//11/1/2/3/4/2 (0-2) situated at village Bilaspur, District Yamuna Nagar marked with letters AECD shown red in the rough site plan attached with the plaint; **And** for Mandatory injunction directing the defendant to remove the super structure which has been constructed illegally upon the encroached area measuring 1'-6" X 32' in the abovesaid passage, shown



Red with letters AEFG in rough site plan; and also constructed projection shown with letters and construction thereupon.

3. It was the pleaded case of the plaintiff in the plaint that there is a passage towards southern side which was left in a family settlement in the year 1985 for ingress and outgress of the plaintiff. This passage is situated on the backside of the property of the defendant which he had purchased from Kailash Chand, brother of the plaintiff. It was stated that defendant was given no right to use the passage which was a private passage of the plaintiff and his brother. It was further alleged that defendant had constructed shop and made encroachment over area measuring 1'-6" x 32' out of the passage. Accordingly, present suit for permanent and mandatory injunction was filed on 11.12.2007.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Bilaspur had partly decreed the suit of the plaintiff as follows:-

"16. As a sequel to my above findings, particularly on issue no. 1, suit of the plaintiff is partly decreed to the effect that as per report of Local Commissioner dated 06.06.2008 Ex. P4 and report dated 18.12.2007 defendant is liable to remove four temporary pillars of 4' height raised in the street in dispute. Defendant is directed to remove the said encroachment within two months from today. Decree sheet be prepared accordingly. File be consigned to record room after due compliance."



5. Against the above said judgment, respondent/plaintiff had preferred Civil Appeal, which was allowed by the learned Additional District Judge, Yamuna Nagar at Jagadhri; whereby the judgment and decree of the learned Trial Court was modified and suit of the plaintiff was decreed in toto vide judgment and decree dated 17.07.2017 as follows:-

“23. As an upshot of the above discussion, the present appeal is hereby accepted with no order as to costs. Consequently, the suit of the plaintiff-appellant is hereby decreed with costs in toto and thus, in addition to the relief granted by the learned lower court, which has already been implemented as per the arguments raised by the learned counsel for the respondent/defendant, further decree for permanent Injunction is hereby passed in favour of the plaintiff-appellant restraining the defendant/respondent from Interfering into the use of the passage in question by the plaintiff-appellant; further, a decree for mandatory injunction is also passed in favour of the plaintiff directing him the defendant to remove the encroachment made by him over 32'X 1'-6" over the rasta/street in question by dint of demarcation report Ex. P4, within a period of two months from today.”

6. Hence, the present second appeal by the defendant.

7. At the very outset, it is submitted by learned counsel for the appellant that in compliance of the decree of the learned Trial Court, appellant had duly removed the four temporary pillars of 4 feet height. It is submitted that however, the learned First Appellate Court has decreed the suit of the plaintiff in toto; thereby directing the appellant to remove



the alleged encroachment made by him over 32' x 1'-6" on the basis of the report of the Kanungo Ex.P4.

8. Learned counsel for the appellant submits that the first Appellate Court has erred in decreeing the suit on the basis of Ex.P4, the report made by Kanungo as the same is contrary to the High Court Rules and Orders which is envisaged in Vol.I, Chapter 1 Part M, where the procedure in Hadd Shikni, which provides the instructions for the guidance of the Commissioner, the Financial Commissioner have issued the detailed Instructions for guidance of the revenue officer or Field Kanungo, appointed as a Local Commissioner in the Civil Suit. But the instructions issued by the Financial Commissioner, envisaged in the High Court Rules were not followed by the Filed Kanungo, while giving his report. Hence, report of Field Kanungo, Ex.P4 is not legal, hence is not binding upon the appellant.

9. Learned counsel for the appellant further submits that the appellant specifically objected the report of the Field Kanungo and in his objection specifically mention that three points on different sides of the place in dispute as near to it were not explained in detail. Further, in the objection, the appellant has specifically mentioned that the Kanungo should demark the demarcation from some pucca point affixed by the Revenue Authorities, but in the present case, neither the pucca point affixed by the Revenue Authorities was mentioned by the Kanungo in his report, nor the instructions issued by the Financial Commissioner was followed. Hence, the report Ex.P4 is not binding upon the appellant.



10. Learned counsel further contends that learned Additional District Judge, Yamuna Nagar at Jagadhri has also failed to appreciate that projection is in conformity with the Sale Deed Ex.D1, which was duly proved by the appellant. In the registered Sale Deed Ex.D1, it is specifically mentioned that appellant can use the land in question as per his own wishes; and it is further mentioned that in the passage, appellant can raise lintel but not below the height of 12-1/2'; and can use projection in the gali upto 2-1/2'. Moreover, it is undisputed fact on record that the said projection has been in existence since July 1996 and was made by the vendor of the appellant i.e. brother of the plaintiff. However, at no stage has the plaintiff ever raised objection to the same. In fact, the plaintiff and his son was present when the construction was made. However, all these admitted facts have been ignored by the learned First Appellate Court.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment dated 17.07.2017 passed by learned Additional District Judge be set aside.

12. *Per contra*, learned counsel for the respondent/plaintiff vehemently opposes submissions of the appellant and that the appellant has admittedly raised projection which extends 32' X 1-6" over the passage; thereby obstructing the use of the plaintiff over the said passage. Therefore, it was the specific prayer of the plaintiff in the civil suit was *"Mandatory injunction directing the defendant to remove the super structure which has been constructed illegally upon the encroached area measuring 1'-6" X 32' in the above said passage, shown Red with letters*



AEFG in rough site plan.....”. Learned counsel points out that even the learned Trial Court had given categorical finding that “*Defendant has made encroachment to the extent of 32’ x 1/2’ raising 4 temporary pillars over the street in dispute regarding removal of which plaintiff is entitled.*” It is submitted that this finding of fact has not been challenged by the appellant before the learned First Appellate Court as Civil Appeal was only preferred by the respondent/plaintiff.

13. It is further submitted that merely because the said illegal construction has been raised by the defendant in the year 1996, would not debar the appellant from claiming its removal. It is submitted that contention of the appellant that no objection was raised by the plaintiff at the time of raising of the said illegal construction, is incorrect. Moreover, learned First Appellate Court has correctly observed that “*Merely because plaintiff/appellant had not put the criminal law into motion by moving any application before the police law into motion by moving any application before the police or before any other authority regarding the misconduct on the part of the respondent/defendant thereby raising of construction forcibly and illegally by making encroaching over the portion of the street in question, that ipso-fact cannot be a ground for the defendant/respondent to protect his illegal act.*” It is submitted that therefore, the present appeal deserves to be dismissed as it is undisputed fact on record that the appellant has raised construction over the suit property which is in excess of what was permitted to the appellant vide Sale Deed.

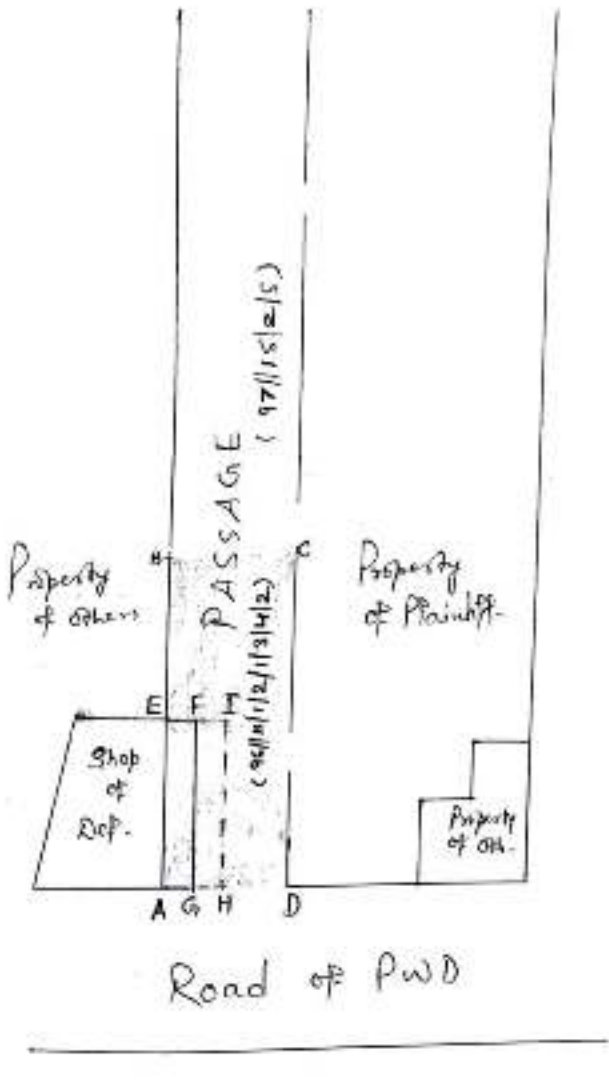


14. No other argument is raised on behalf of learned counsel for the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of learned counsel for the appellant.

15. It is undisputed fact on record that as per the Sale Deed dated 11.06.1996 Ex.D1 (at page 95 of the LCR), appellant had been permitted to *“raise lintel which would not be below the height of 12-1/2’; and the same could extend into the passage only upto the depth of 2-1/2’.”* Learned Trial Court had given categoric finding of fact that *“Defendant was found in possession of land measuring 32’ x 1/2’ having made encroachment over the rasta.”* Appellant has not filed any Civil Appeal and this finding of fact has not been challenged by the appellant before the first Appellate Court. Therefore, it is the concurrent and undisputed finding of fact on record that the appellant has raised construction in excess of what was permitted to him vide the Sale Deed Ex.D1 *inasmuch as* the appellant has raised projection to the extent of depth of 32’ X 1’6” in the passage. This fact is also established from a perusal of the site plan Ex.P7 (at page 173 of the LCR) which shows that appellant has made projection of depth of 32’ x 1-6” depicted at points AEFG. The said site plan is reproduced herein below:-



EXH 100
31/3/09
31/3/09
11/11/09
Rough Site plan of part of Gali shown red in colour & encroached area of 1 1/2' x 32' by defendant shown with letters A E F G and Projection with letters G H I F situated at vill. Bilaspur, Distt. YNR



16. Clearly, therefore, the appellant has encroached, by constructing projection in excess of the sale deed.
17. At this stage, learned counsel, on instructions from their respective parties, submit that the party shall be satisfied if the appellant

demolishes the construction which is in excess of the sale deed. Accordingly, the appellant upon instructions, undertakes that construction of lintel raised by the appellant beyond the Sale Deed, shall be forthwith removed; and that the appellant shall ensure that the projection extends only to the depth of 2-1/2’ inches into the passage; and will not be at a height lower than 12-1/2’. Appellant undertakes to do the above within eight weeks from today; failing which it shall be open to the respondent to seek recourse to appropriate remedy as per Law.

18. In view of the above, the present Regular Second Appeal is **partly allowed** to the above extent in view of the undertaking given by learned counsel for the appellant. Decree sheet be prepared accordingly.

19. Pending applications, if any, stand disposed of.

10.02.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE