**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****237****RSA-755-2018 (O&M)****Date of decision: 06.04.2026****Sube Singh****...Appellant(s)****Vs.****Laxmi Devi and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

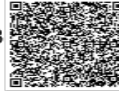
Present:- Mr. S.S. Khurana, Advocate for the appellant.

Mr. Aditya Yadav, Advocate
for respondents No.1 and 2.

NIDHI GUPTA, J.

Defendant No.1 is in second appeal against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the plaintiffs/respondents No.1 and 2 herein, for permanent and mandatory injunction, has been decreed by both the District Courts.

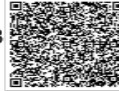
2. Brief facts of the case are that the plaintiffs/respondents No. 1 and 2, had filed present Civil Suit seeking decree of permanent and mandatory injunction. The pleaded case of the plaintiffs is that a common road allows access to house of all the plaintiffs and defendants. This was the only road to access house of the plaintiffs. Plaintiffs have no alternate passage except this area. Previously, one Matadin son of Gordhan had



filed **Civil Suit No.444 of 1986** titled as **Matadin son of Gordhan and others vs. Sube Singh and others** for declaration and injunction against the present defendants in respect of the present suit land. In the said suit categoric finding of fact was given that the present plaintiffs/respondents are not owners of the suit land. However, in the said suit, plaintiffs were held entitled to use the passage for access and defendant/present appellant was directed to prove access to the plaintiffs. Consequentially, the said suit had been partly decreed vide judgment and decree dated 10.06.1995.

3. It was further averred that defendants No.1 and 2 being Sube Singh and Krishna had also filed a Civil Suit seeking injunction against defendant No.5/Prem, and others, which was dismissed on 16.05.2008 by learned Civil Judge (Junior Division), Rewari. It was further alleged in the present plaint that defendants No. 1 to 4 proposed to erect a wall opposite the door of the plaintiffs' house which is not warranted. It was averred that plaintiffs had requested defendants to leave access open and not to erect the wall but to no avail. On 05.09.2011 defendants had finally refused the prayer of the plaintiffs. Hence, present suit was filed on 07.09.2011.

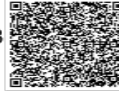
4. Upon appraisal of the pleadings and the evidence led by the parties, the Civil Judge (Junior Division), Rewari had decreed the suit of the plaintiffs vide judgment and decree dated 31.05.2014 as follows: -



“14. In view of the above discussion and issue-wise findings the suit of the plaintiffs is decreed restraining defendants from raising any construction over the suit land as was envisaged in judgment dated 10.06.1995 of Learned Sub-Judge in C.S. No. 444 of 1986 and to remove all construction undertaken after that date. No order as to costs. Decree sheet be prepared. File be consigned to record room after due compliance.”

5. The Civil Appeal filed by defendant No.1 was dismissed by the learned Additional District Judge, Rewari vide judgment and decree dated 17.08.2017. Hence, the present second appeal by defendant No.1.

6. It is *inter alia* submitted by learned counsel for the appellant that present suit land is the same land which was the subject matter of **Civil Suit No. 444 of 1986** titled as **Matadin and others vs. Sube Singh and others**. The said suit had been filed by the predecessor in interest of the present plaintiffs for declaration and permanent injunction. Vide judgment dated 10.06.1995, the learned Civil Sub Judge, 1st Class, Rewari had only partly decreed the suit and had recorded a categoric finding that present plaintiff/respondents are not owners of the suit property. The learned Sub Judge has further given a categoric finding that *“The suit property belongs to the defendants.”* It is submitted that therefore, ownership of the present appellant over the suit property, is undisputedly established on record. However, the previous Civil Suit No. 444 of 1986 was only partly decreed in

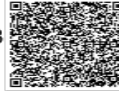


favour of the appellant by the learned Sub Judge, 1st Class, Rewari vide judgment and decree dated 10.06.1995 in the following terms:

“15. In view of the above discussion, and the findings on the above issues, the suit of the plaintiffs for declaration that they are joint owners of the suit property is dismissed but the suit for permanent injunction is decreed restraining the defendants from making any such construction as would be likely to impair the plaintiffs’ right to use the suit property as passage to their houses. Parties are left to bear their own costs. Decree-sheet be prepared accordingly and file be consigned to the records.”

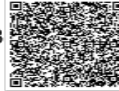
7. Thus, vide the judgment dated 10.6.1995, appellants were held to be owner of the suit land. However, plaintiffs were granted right to use the suit passage for the purpose of making ingress and egress to their houses.

8. It is submitted that thereafter, present defendants/appellant and proforma respondent no.5 herein, had filed a **Civil Suit No. 827 dated 19.03.1998** titled as **Sube Singh and another Vs. State of Haryana and others** (Ex. PW3/B), for permanent and mandatory injunction against the husband of the respondent no. 1 and others, when they were trying to lay sewer pipe line through the property in dispute. Rishi Raj, predecessor-in-interest of the present plaintiffs, was defendant No.3 in the said Civil Suit No. 827 of 1998. In the said Civil Suit No. 827 of 1998, while deciding the application under Order 39 Rule 1, 2 C.P.C. order dated 28.03.1998 Ex.DA was passed by the learned Civil Judge (Senior Division), Rewari, and its relevant portion is reproduced below: -



"6. Plaintiffs had placed on record copy of judgment and decree dated 10.6.95 passed in civil suit No. 444 of 1986 and perusal of these documents reveal that plaintiffs and defendants No. 3 and 4 had already raised a dispute staking their claim with regard to the suit property which is subject matter of the present suit. The aforesaid civil suit No. 444 was instituted by present defendants No. 3 and 4 on the averments that the suit property was common chowk and the present plaintiffs resisted the suit on the plea that suit property belong to them. A specific issue was framed to the effect whether the plaintiffs and defendants are joint owner in possession of the suit property. On appreciation of the evidence adduced by the parties, a finding was returned holding that the plaintiffs (defendants No. 3 and 4 in the present suit) are not the owners of the suit property, although they have right to use the same for the purpose of making ingress or ingress to their houses and that the suit property belongs to the defendants (the present plaintiffs). The defendants have neither averred nor produced any evidence indicating that the above findings recorded in favour of the present plaintiffs were set aside in appeal or other proceedings. Thus, the present plaintiffs in the wake of judgment and decree referred to above have to be presumed as owners of the suit property.

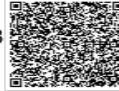
7. There is no denying the fact that defendants No. 3 and 4 have a right to use the suit property for the purpose of making ingress and ingress to their houses. In other words, the defendants cannot but claim a rasta from the suit property. It is the domain of plaintiffs who are owners of the suit property, to decide as to how the rasta is to be provided to the defendants. Plaintiffs have shown the rasta provided to the defendants in yellow colour on the site plan. This is the rasta on which the



doors of defendants' houses and some other persons owning adjoining properties, already open. So, the yellow coloured rasta not only will be the most suitable but also will save the remaining suit property belonging to the plaintiffs from unnecessary encroachment. Defendants can, therefore, lay sewer pipe in the said rasta if they intend to connect their latrine with the main sewerage system.

8. Learned counsel for the defendants has submitted water pipe lines of the defendants had already been laid in the disputed chowk and balance of convenience is, therefore, in favour of them to lay sewer pipe line through the disputed chowk instead of passage shown in yellow colour on the site plan. This court is not inclined to accept the contention. Undeniably, the plaintiffs were held to be the owners of the suit property. They have, therefore, all proprietary rights to use the suit property subject to the condition that they would allow a right to passage from the suit property to the defendants. The plaintiffs in all fairness have left yellow coloured passage for the use of defendants. It will now not be open to the defendants to claim any further right in the suit property much less to the extent of laying sewer pipe lines in a manner which will deprive the plaintiffs from enjoying proprietary rights over the disputed chowk. Plaintiffs have, therefore, a prima facie case for grant of interim injunction in their favour.

9. The defendants can lay sewer pipe line in the yellow coloured passage and no irreparable loss will be caused to them by grant of interim injunction. On the contrary, the plaintiffs are likely to suffer irreparable loss if the defendants are allowed to jeo-pardise their right to use the disputed chowk over which their proprietary rights have been recognized vide judgment and decree dated 10.6.1995.

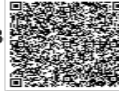


10. In the result, the application under Order 39 Rule 1, 2 CPC is allowed and the defendants are restrained from laying sewer pipe lines in the disputed chowk shown in red colour in site plan attached with the plaint. However, defendants will be at liberty to lay sewer pipe lines in the Gali shown in yellow colour on the said site plan.

10. Nothing stated herein shall be deemed to be an expression on the merit of the case.”

9. Pursuant to direction of the Civil Court, appellants had duly provided rasta to the defendant therein for laying of the sewer pipelines. Consequentially, on the joint statements dated 17.04.2004 made by both the parties the said Civil Suit No. 827 of 1998 was dismissed as withdrawn vide order dated 17.04.2004 Ex.PW3/A passed by learned Civil Judge (Senior Division), Rewari. Learned counsel for the appellant submits that therefore, appellant and proforma respondent no. 5 are owners of the suit property who have left the passage for the ingress and egress of the contesting respondents; and have even permitted the respondents to lay sewer pipeline through the suit property. Thus, there was no ground or occasion for the plaintiffs to file the present suit which is liable to be dismissed with costs.

10. It is reiterated that from the above facts and evidence, it is clearly established on record that: appellants are the owners of the suit property; that appellants were directed to provide ingress and outgress to the respondents, which has been duly done by them; that vide order dated 28.03.1998, appellants have also been directed to permit respondents to

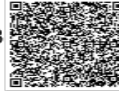


lay sewer pipe line; pursuant to which appellants had duly provided *gali* to the respondent to lay pipe line in compliance of the directions of the learned Civil Judge (Senior Division), Rewari. Thus, appellants have duly complied with each and every direction issued by the Courts. Yet, respondents have filed the present Suit for permanent and mandatory injunction.

11. It is contended that in view of the facts as noted above, suit of the plaintiffs/respondents could not have been decreed. It is submitted that the impugned judgment has been passed without reading and interpreting the judgment dated 10.06.1995. It is contended that both the Courts have committed grave legal error while observing that plaintiffs have been given “unhindered right” to use the disputed property i.e. Chowk which had, in actual fact, been declared to be of ownership of the appellants only.

12. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decrees of the learned District Courts be set aside and suit of the plaintiffs be dismissed.

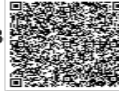
13. *Per contra*, learned counsel for respondents No.1 and 2/plaintiffs vehemently opposes submissions advanced on behalf of the appellant/defendant No.1 and submits that appellant has failed to mention before this Court that consequent to the passing of the judgment and decree dated 10.06.1995 Ex.P2 and the order dated 17.04.2004 Ex.PW3/A, appellant had raised construction over a part of the suit property; thereby effecting locking the ingress and outgress of the plaintiffs over the suit land.



It is submitted that both the District Courts have duly taken note of the fact that in the original Site Plan Ex.DW4/1 produced by the appellant before the learned District Courts, no construction is shown over the disputed portion. However, now as per the admitted Site Plan on record Ex.P4, it is clear that construction exists at the disputed spot. Clearly therefore, the said construction has been freshly raised by the appellant; thereby blocking ingress and outgress of the plaintiffs to their house; and the same being in violation of the judgments and decrees referred above. It is accordingly prayed that the present appeal be dismissed.

14. I have heard learned counsel for the parties and perused the case file in a great detail. I find merit in the submissions advanced on behalf of learned counsel for respondents No. 1 and 2/plaintiffs.

15. Perusal of the record shows that there is no dispute with regard to the fact that the suit land is owned by the appellant and performa respondent no.5. The issue of ownership over the suit land already stands settled previously between the parties by way of judgments dated 16.06.1969 and 10.06.1995 Ex.P2. As noted above, in the judgment dated 10.06.1995 Ex.P2, the learned Sub Judge 1st Class, Rewari has categorically held that “..... Thus, I have no hesitation to conclude that the plaintiffs are not the owners of the suit property, although they have right to use the same for the purpose of making egress and ingress to their houses and that the suit property belongs to the defendants. This issue is accordingly disposed of partly in favour of the plaintiffs and partly in favour of the



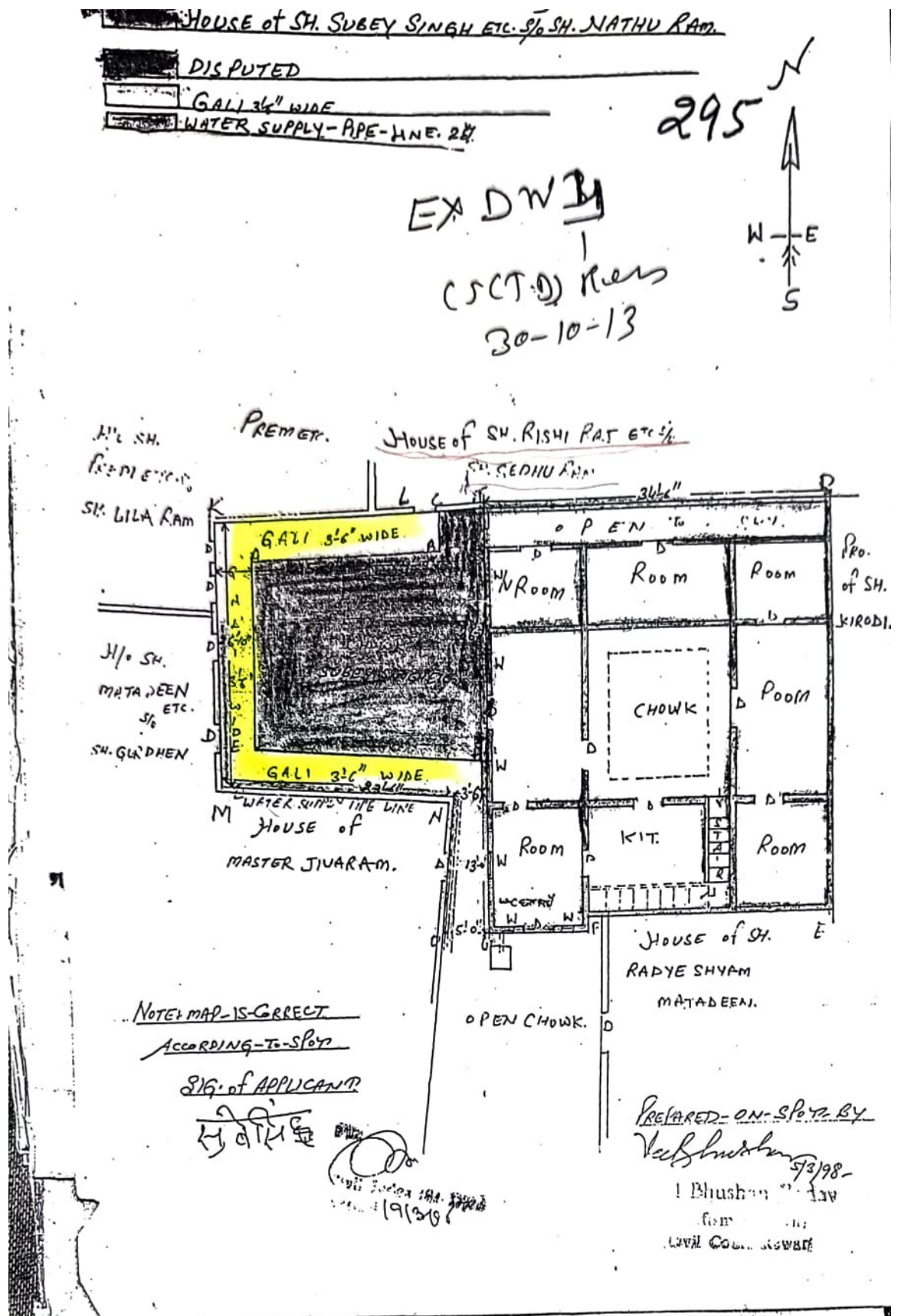
defendants. Their title in the suit property is however subject to such use as will not affect the plaintiffs' right to use the same as passage to their houses. In view of the above discussion, and the findings on the above issues, the suit of the plaintiffs for declaration that they are joint owners of the suit property is dismissed but the suit for permanent injunction is decreed restraining the defendants from making any such construction as would is likely to impair the plaintiffs' right to use the suit property as passage to their houses. Parties are left to bear their own costs. Decree-sheet be prepared accordingly and file be consigned to the records."

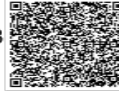
16. From the above, it is shown that the present defendants were held to be owner of the suit property; however, plaintiffs were granted rights to ingress and outgress through the suit property.

17. Ownership of the appellant over the suit property is again acknowledged/admitted in the order dated 28.03.1998 Ex.DA passed by the learned Civil Judge (Senior Division), Rewari, in the **Civil Suit No. 827 dated 19.03.1998** titled as **Sube Singh and another Vs. State of Haryana and others** (Ex. PW3/B).

18. It is also undisputed fact on record that in compliance of the judgment and decree dated 10.6.1995; as also in compliance of the order dated 28.3.1998, the appellant has permitted access to the plaintiffs through the Rasta. To better understand the issue at hand, it will be helpful to peruse the following Site Plan Ex.DW4/1 produced by the

appellant in the second **Civil Suit No. 827 dated 19.03.1998** titled as **Sube Singh and another vs. Haryana Government and others: -**

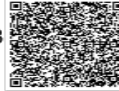




19. To clarify, it is reiterated that in compliance of the judgment and decree dated 10.6.1995; as also in compliance of the order dated 28.3.1998, the appellant has permitted access to the plaintiffs through the Rasta, and sewer pipeline below the rasta - which is depicted in yellow in the above Site Plan. If defendants have complied with every direction of the Court, then the question arises as to what constrained the plaintiffs to file the present suit.

20. It has been contented by the plaintiffs that necessity to file the present suit for mandatory and permanent injunction, arose as defendant had raised construction in the Chowk, thereby obstructing their access to their property. There is merit to the contention of the plaintiff.

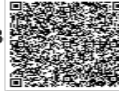
21. The above reproduced Site Plan Ex.DW4/1 was produced by the appellant in the second Civil Suit No. 827 dated 19.03.1998. Perusal thereof shows that there is no construction in the suit property/Chowk in the said Site Plan produced by the appellant himself. In the *gali*, highlighted in yellow colour, which is the passage provided by the appellant to the plaintiff, it is shown that plaintiffs have unhindered access - as directed vide decree dated 10.6.1995. The plaintiffs have also used the same passage depicted in yellow to lay sewer pipeline, as directed vide order dated 28.03.1998. To refresh the memory, relevant extract of the order dated 28.3.1998 Ex.DA passed by Civil Judge (Senior Division), Rewari in Civil Suit No. 827 dated 19.03.1998 titled as **Sube Singh and another vs. Haryana**



Government and others; while deciding application under Order 39 Rules 1 and 2 CPC, is as under:-

“7. There is no denying the fact that defendants No.3 and 4 have a right to use the suit property for the purpose of making ingress or egress to their houses. In other words, the defendants cannot but only claim a rasta from the suit property. It is the domain of plaintiffs who are owners of the suit property, to decide as to how the rasta is to be provided to the defendants. Plaintiffs have shown the rasta provided to the defendants in yellow colour on the site plan. This is a rasta on which doors of defendants’ houses and some other persons owning adjoining properties, already open. So, the yellow coloured rasta not only will be the most suitable but also will save the remaining suit property belonging to the plaintiffs from unnecessary encroachment. Defendants can, therefore, lay sewer pipe line in the said rasta if they intend to connect their latrine with the main sewerage system.

8. Learned counsel for the defendants has defendants submitted that water pipe lines of the defendants had already been laid in the disputed chowk and balance of convenience is, therefore, in favour of them to lay sewer pipe line through the disputed chowk instead of passage shown in yellow colour on the site plan. This court is not inclined to accept the contention. Undeniably, the plaintiffs were held to be the owners of the suit property. They have, therefore, all proprietary rights to use the suit property subject to the conditions that they would allow a right of passage from the suit property to the defendants. The plaintiffs in all fairness have left yellow coloured passage for the use of defendants. It will now not be open to the defendants to claim any further right in the suit property much



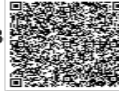
less to the extent of laying sewer pipelines in a manner which will deprive the plaintiffs from enjoying proprietary rights over the disputed chowk. Plaintiffs have, therefore, a prima-facie case for grant of interim injunction in their favour.

9. The defendants can lay sewer pipe line in the yellow coloured passage and no irreparable loss will be caused to them by grant of interim injunction. On the contrary, the plaintiffs are likely to suffer irreparable loss if the defendants are allowed to jeopardise their right to use the disputed chowk over which their proprietary rights have been recognized vide Judgment and decree dated 10.6.1995.

10. In the result, the application under Order 39 Rule 1, 2 CPC is allowed and the defendants are restrained from laying sewer pipe lines in the disputed chowk shown in red colour in site plan attached with the plaint. However, defendants will be at liberty to lay sewer pipe lines in the Gali shown in yellow colour on the said site plan.”

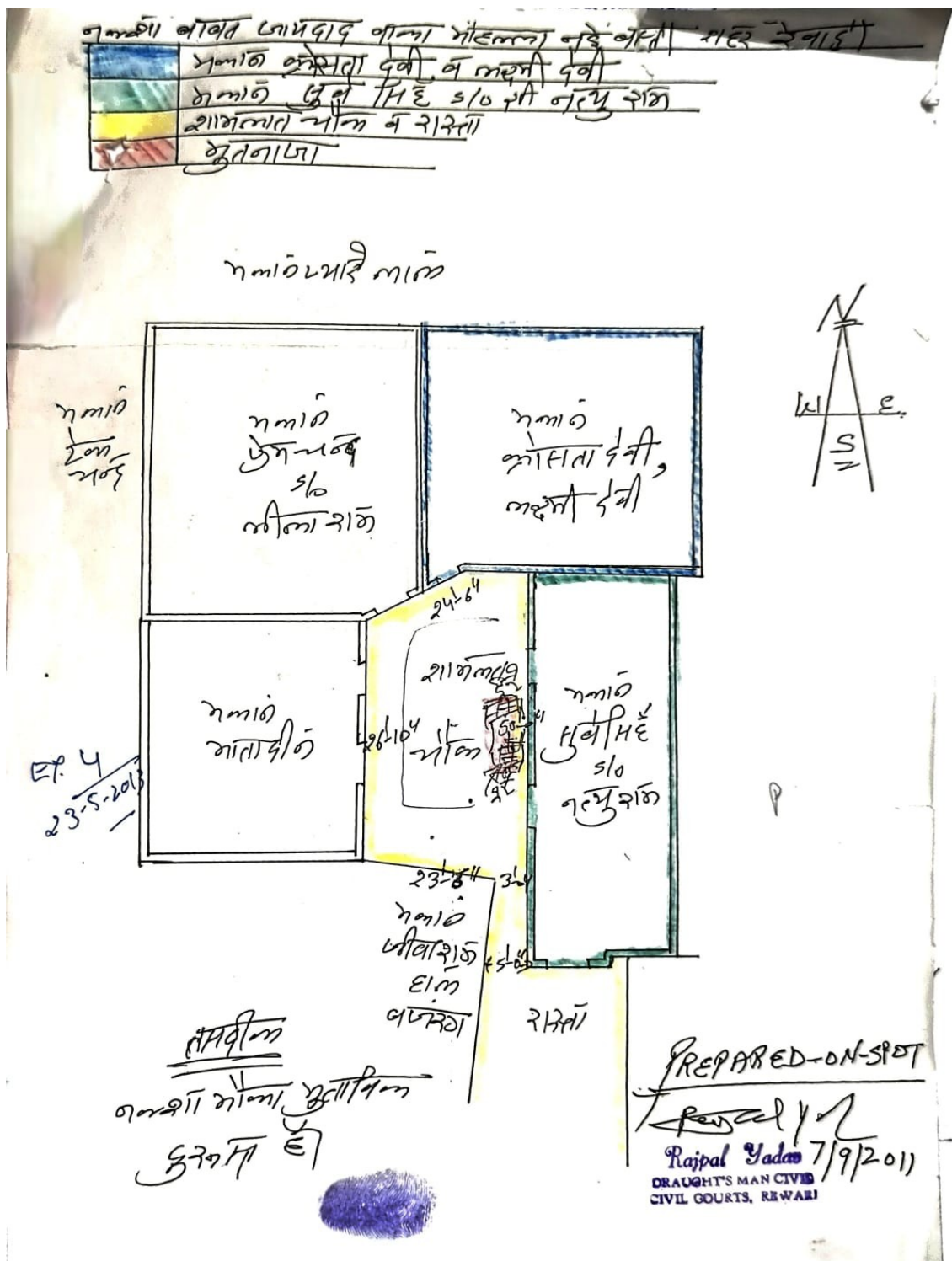
22. From the above, it is clear that present plaintiffs were permitted to lay sewer pipeline in the passage. Further, perusal of Site Plan Ex.DW4/1 produced in the said Civil Suit No. 827 of 1998 shows that plaintiffs have unhindered access and could have laid sewer pipeline vide order dated 28.03.1998. As already noted above, no construction exists in the suit property/Chowk at the time of passing of order dated 28.3.1998.

23. Further, even at time of passing of the order dated 17.04.2004 Ex.PW3/A, whereby present appellants had withdrawn their previous **Suit No. 827 of 1998** titled as **Sube Singh and another vs. Haryana Government**

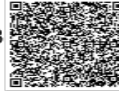


and others, there is no mention by the appellant of any construction raised on the suit property. It is therefore proven that even at time of passing of order dated 17.4.2004, no such construction existed on suit property.

24. However, the Site Plan Ex. P-4, now produced by the plaintiffs reflects construction of cattle shed in the suit property/Chowk. The said Site Plan is reproduced as under:-



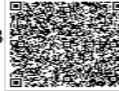
25. It has been contended on behalf of the plaintiffs/respondents No.1 and 2 that in the interregnum after 17.04.2004, the appellant had raised construction over the suit property; thereby hindering access of the plaintiffs to their house. It is to be noted that the Defendants in their written statement have not denied the construction. Rather, in para 2 of the reply on merits, defendants had stated that they have raised construction of



the cattle shed “since long”. However, in the entire written statement, defendants have made no reference as to when they have raised the present construction. Clearly, the said construction has been raised after the year 2004. It is also clear that defendant had no right to raise the construction as, vide the above said decrees dated 16.6.1969 and 10.6.1995, their right to raise the construction has been categorically turned down.

26. Even a perusal of the photographs Ex.PW1/A to Ex.PW1/F shows that construction of one room with tin shed, which is new construction, has come up at the spot on the passage. A perusal of the Site Plan dated 05.03.1998 Ex.DW4/1 in the previous Civil Suit No. 827 of 1998 shows that there is no reference to any cattle shed in any chowk. In the judgment dated 10.06.1995 in respect of issue No.1, it has been categorically held that the disputed chowk is to be used by Matadin, Rishi Raj and Prem Chand/predecessors-in-interest of the present plaintiffs. Plaintiffs have also held entitled to the suit property for the purpose of ingress and outgress of their houses; as had been even done prior thereto to in Civil Suit No. 213 of 1969 dated 16.06.1969.

27. A perusal of the extract reproduced above from the judgment dated 10.06.1995 also shows that the suit for declaration and permanent injunction was dismissed qua declaration. However, predecessor-in-interest of the present defendants were restrained from making any construction which had impact on the rights of the plaintiffs to use the property as

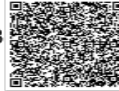


passage to their houses. Clearly, therefore, the defendants have violated the decree.

28. Learned First Appellate Court has, therefore, correctly observed that merely because no Contempt Petition was filed by the plaintiffs against the defendants for violating the undertaking and previous decrees by raising construction, would not entitle the defendants to maintain the said construction. Version of DW1 that tin shed was raised about 50 years back, not only remains unsubstantiated, but is totally contrary to the records/Site Plan relied upon by the appellant himself. Defendant No.2, while appearing as DW4 has contradicted the version of his own witness, when he stated in his cross-examination that tin shed was constructed 8-10 years back i.e. somewhere between 2003 to 2005.

29. From the above facts, it was established irrevocably on record that during the pendency of the suit and in violation of previous decrees dated 16.06.1969 and 10.06.1995, defendants had raised construction by obstructing the passage, which was the only way for ingress and outgress of the plaintiffs. Thus, no error can be found in the impugned judgments and decrees passed by the District Courts.

30. Even otherwise, it is undisputed position in law that this Court in Second Appeal has limited jurisdiction to interfere in the findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, as under: -



*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"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."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

31. In the present case, appellant has been unable to show any procedural or other legal error.

32. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings, or even the legal position noted above.

33. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts. The present regular second appeal is hereby **dismissed**.
34. Pending applications, if any, stand disposed of.

06.04.2026

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No