

108 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

2025:PHHC:118284



RSA-1251-2021 (O&M)  
DATE OF DECISION : 02.09.2025

NARESH KUMAR

... APPELLANT

V/S

HARPREET SINGH (SINCE DECEASED) THROUGH LR AND OTHERS  
... RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Mohit Jaggi, Advocate for the appellant.

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**PARMOD GOYAL, J. (ORAL)**

Plaintiff-appellant is aggrieved by the impugned judgement dated 01.11.2019 passed by learned District Judge, Mohali whereby appeal preferred by defendants was allowed and suit of plaintiff was dismissed. Parties were left to bear their own costs.

2. Admittedly, plaintiff-appellant had filed a suit for mandatory injunction seeking directions to defendants to remove unauthorised wall constructed over the wall ABC of the house of plaintiff and also to remove the iron gardens and tin shed from said wall. Plaintiff had also sought permanent injunction seeking to restrain defendants from making any kind of extension/construction over the wall. The case of the plaintiff was that he had purchased house marked with letter 'ABCDE' measuring 2.5 Biswas from Gulshan Kumar who had constructed the house by purchasing vacant plot from defendant no.3 vide sale deed dated 05.03.2009 and since the date of purchase, plaintiff is owner in possession of suit property. It was asserted that at the time of purchase of house, there was no construction over the area adjoining/abutting the house. The plaintiff became exclusive owner of

house purchased by him from Gulshan Kumar. However, taking benefit of his absence, defendants have raised construction over the existing wall and had put iron gadders and tin shed thereupon and accordingly, plaintiff is seeking removal of the same. Upon notice, defendants appeared and filed detailed written statement, took number of preliminary objections regarding maintainability etc. It was asserted that it was defendant No.3 who was owner of the house in dispute and constructed the same in the year 1983. Defendant No.3 had sold the said house to Gulshan Kumar who further sold the same to plaintiff. Wall in dispute was stated to be jointly constructed by defendant No.3 and the father of defendant Nos.1 and 2 and that since its construction wall is joint and is being jointly used by both the parties since 1983. It was specifically asserted that neither plaintiff nor Gulshan Kumar has raised construction of the wall. The wall was stated to be joint and expenses for same were stated to be jointly borne by defendants. It was asserted that with the passage of time, defendants have raised the height of joint wall and it was never objected by the plaintiff. Plaintiff himself had suggested that a beam be placed on the wall. However, since defendants were not putting anything except tin sheds, they decided not to do that. Dismissal of suit was prayed for.

3. Following issues were framed from the pleadings of the parties:-

- i) Whether plaintiff is entitled for the relief of Mandatory Injunction directing the defendant Nos. 1 and 2 to remove the unauthorized wall constructed by them and also to remove iron gadder and tin-shed installed by them in suit property? OPP
- ii) Whether plaintiff is entitled for the relief of Permanent Injunction restraining the defendants from raising any kind of extension by way of construction in the suit property? OPP
- iii) Whether plaintiff has not approached the court with clean

hands and has suppressed the material facts from the Court?  
OPD

iv) Whether suit is not maintainable in present form? OPD

v) Relief.”

4. Learned Court of Civil Judge (Junior Division), Kharar vide judgement dated 29.11.2018 concluded that plaintiff has succeeded in proving his case and accordingly, defendants were directed to remove unauthorised wall constructed by them and also remove the iron ganders as well as tin shed installed by defendants. However, on appeal, learned District Judge, Mohali vide impugned judgement and decree dated 01.11.2019 concluded that as no demarcation report was ever placed by plaintiff to prove that wall existed exclusively in area falling in his share and plaintiff has further failed to prove that construction was raised by him, therefore, it was concluded by the First Appellate Court that plaintiff has failed to prove exclusive ownership over the wall dividing house of plaintiff and that of defendants.

5. In the present case, fact that wall ABC is between the house of plaintiff and defendants is not at all in dispute. The sole case of plaintiff-appellant is that wall was constructed in part of his house by his predecessor Gulshan Kumar and wall is his exclusive property whereupon defendants have no right. Since plaintiff is claiming that the wall was exclusive wall owned by plaintiff which falls between his house and that of defendant, it was for plaintiff to prove assertions made by him in his plaint. However, as noted by learned First Appellate Court, plaintiff-appellant had not adduced any evidence showing that wall falls within area of his plot which he had purchased vide sale deed dated 05.03.2009. No demarcation was got

conducted. No demarcation report has been produced on record to show that wall exclusively falls in plot owned by plaintiff vide sale deed dated 05.03.2009. The plaintiff has also failed to prove that the wall was constructed exclusively by Gulshan Kumar. There is no evidence to conclude that wall was exclusively constructed by Gulshan Kumar by using his own funds without sharing the same with the defendants. In fact, there is no evidence on record that the wall was constructed by Gulshan Kumar. The assertions of plaintiff has to be seen in the light of defence taken by defendants who had asserted that construction was raised in the year 1983 and Gulshan Kumar was sold a constructed house. Neither these assertions have been shown to be wrong nor any evidence has been led by appellant to show that Gulshan Kumar ever raised construction as claimed by plaintiff.

6. In view of the abovenoted facts, it is clearly made out that plaintiff has failed to discharge onus cast upon him to prove that wall exclusively vested in him as it was raised by him. Since the wall divides the house of plaintiff and defendants and is a common wall and there is no evidence to show that it was constructed by plaintiff in his own area, the suit of plaintiff has to fail. Therefore, no fault with the findings of First Appellate Court can be found. No question of law arises in present case.

7. Present appeal is, accordingly, dismissed being devoid of any merits. Pending miscellaneous application(s), if any, shall also stand disposed of.

**02.09.2025**

Janki

**(PARMOD GOYAL)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No