

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-944-2018 (O&M)****Date of decision: 08.07.2025****Narender Girdhar****...Appellant(s)****Vs.****Sheela Rani****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Naresh Kumar, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant for mandatory injunction directing the defendant/respondent to demolish the wall from the half share of the plaintiff, has been dismissed by both the Courts below.

2. At the very outset, it may be pointed out that the present appeal is of the year 2018 and notice has not yet been issued in the same as the matter has been adjourned since 2018 till date, at the request of learned counsel for the appellant. It is further pointed out that the present appeal is accompanied by an application (CM-2333-C-2018) under Order 41 Rule 27 read with Section 151 CPC for placing on record the Sale Deed dated 01.03.1974 as additional evidence. Perusal of the said application reveals that no reason has been given for not bringing on record the said Sale Deed before the learned Courts below. All that has



been stated is *“however, Sale Deed dated 01.03.1974 could not be placed on record before the Id. Trial Court.”* As such, applicant-appellant cannot be permitted to lead additional evidence at this belated stage, especially evidence which was in the knowledge of the appellant. The application, accordingly, stands dismissed.

3. Ld. Counsel for the appellant submits that the house No. 526-R, Ward No. 9, Panipat was purchased by the father of the appellant vide registered sale deed dated 10.5.1973. It is submitted that in the said sale deed, it is specifically mentioned that the wall in question is a common wall between the parties. Even in the sale deed dated 1.3.1974 executed in favour of the defendant whereby house No. 526, Ward No. 9 Panipat was sold to the defendant, it is mentioned that the wall in question is a common wall. However, the defendant has constructed a wall which is encroaching upon the half share of the plaintiff in common wall of 36” width 19 feet length, the same being common wall of the house of the plaintiff, and of the house of the defendant. It is accordingly submitted, that the learned courts below were in patent error in non-suiting the appellant.

4. No other argument is raised on behalf of the appellant.

5. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant/plaintiff.

6. It is the case of the appellant that the disputed wall shown as ‘ABCD’ is a joint and common wall between the parties. However, it is to



be considered that the house of the defendant and the disputed common wall were constructed before 1982. Admittedly, no objection was raised by the plaintiff at that time. In this regard, evidence of DW1/Kanta/daughter of the defendant is relevant who had stated that she had got married in 1982; that the house in question was constructed prior to her marriage; and no alteration has been made to the said house thereafter. Moreover, the suit was instituted only on 28.11.2014. As such, it was incumbent upon the plaintiff to prove that the defendant had raised construction over the wall to the extent of 32" width in June 2014. However, no evidence has been produced by the plaintiff to prove any such fresh construction by the defendant in 2014.

7. Further, the plaintiff has relied upon the Sale Deed dated 10.05.1973 Ex.P1 where the disputed wall is shown to be joint. However admittedly, the said Sale Deed is a unilateral document, and defendant is not a party to the same. As such, defendant is not bound by the said Sale Deed in any manner. Although the plaintiff had mentioned in para 3 of his plaint the fact that '*disputed wall is a joint wall*' is mentioned in the Sale Deed of the defendant, however, for reasons best known to the plaintiff, said Sale Deed of the defendant was not produced by the plaintiff to prove that wall is joint. Plaintiff also did not get any Local Commissioner appointed to ascertain the fresh construction. Even during the course of arguments, learned counsel for the appellant has admitted that the plaintiff was unable to prove before the learned Courts below that wall in question is constructed on his side of the house.



8. Even further, one witness of the plaintiff i.e. PW2 did not support the case of the plaintiff. PW3 and PW4, who are the formal witnesses, being the Registry Clerk and Draftsman respectively, had proved the site plan Ex.P2 and Sale Deed Ex.P1. However, by mere proving of site plan, ownership cannot be established.

9. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

08.07.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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