

2025:PHHC:129938



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Reserved on: September 09, 2025
Pronounced on: September 19, 2025**

**CM-6573-C-2025 in/and
RSA No.1867 of 2025 (O&M)**

Prem Chand and others Appellants

Vs.

Jagmal Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by :- Mr. Sarthak Gupta, Advocate for the appellants.

Present at the time of pronouncement :- None.

DEEPAK GUPTA, J.

CM-6573-C-2025

This is an application under Section 5 of the Limitation Act to condone the delay of 20 days in filing the appeal.

For the reasons as mentioned in the application, supported by an affidavit of one of the appellants, delay of 20 days in filing the appeal is hereby condoned.

The application stands disposed of.

RSA No.1867 of 2025 (O&M)

Four out of seven defendants of the case are before this Court in the present regular second appeal, assailing the concurrent findings of the Courts below, inasmuch as suit filed by plaintiffs – Jagmal Singh and others (*contesting respondents herein*) seeking decree of permanent injunction regarding property in dispute, was partly decreed by the trial Court on 19.11.2018, and the appeal filed by five of the defendants including the present appellants, was dismissed by the First Appellate Court of learned

Addl. District Judge, Yamuna Nagar at Jagadhri on 17.01.2025, thus affirming the findings of the trial Court.

2. Learned counsel for the appellants has been heard and the record perused.

3. The dispute pertains to alleged encroachment made by the defendants upon some of the property belonging to the plaintiffs, and also the common blind street (*kutchā bandh*) existing between the houses of two parties.

4. According to the plaintiffs, they are owners of the house situated in village Alahar, with its courtyard shown by letters 'EFCD' in the annexed site plan. In the eastern side of the said courtyard, there exists a common *kutchā bandh* (blind street) shown by letters 'DCBA' and in further East exists the house of the defendants. The common blind street is being used by both the parties since the time of their ancestors. It was pleaded that father of the defendants had earlier filed a suit for permanent injunction in respect of his house and the *firni* situated in the East of his house, wherein *kutchā bandh* was shown to exist on the West of his house. In that case, the father of the defendants had pleaded the dimensions of his house to be 60' each on the eastern & western sides and 42' each on the northern and southern sides. That suit was decreed and the judgment had attained finality. The plaintiffs alleged further that in January, 2014, with a malafide intention, defendants constructed two rooms as shown by letters 'GHBK' covering the part of the courtyard of the plaintiffs as well as the common *kutchā bandh* (passage). Request made by the plaintiffs to the defendants to remove the said construction and hand over the vacant possession of the portion of 'GHCI' in the site plan went unheeded and so, the plaintiffs brought the suit seeking decree for possession besides mesne profits @ ₹40/- per day.

5. Defendant Nos.1 to 5 in the written statement claimed that suit was barred by the principle of *res judicata*, as boundaries of the house of the parties have already been decided in the earlier suit. It was claimed that property shown by letters 'GHBK' belongs to the defendants since time

immemorial, with which plaintiffs have no concern. Prayer was accordingly made for dismissal of the suit. The other defendants did not contest the suit.

6. After framing issues and taking evidence, the trial Court partly decreed the suit and ordered the defendants to remove the construction from the portion shown by letters 'GHJCKB' and 'LMAN' in the site plan by way of judgment dated 19.11.2018. On the appeal filed by the defendants, the First Appellate Court re-appreciated the evidence and dismissed the appeal.

7. Assailing the concurrent findings, it is contended by learned counsel for the appellants that the Courts below failed to appreciate the evidence on record in correct prospective.

8. The First Appellate Court while re-appreciating the evidence on record, has observed as under:-

“11. A careful reading of the site plan Ex. P1 in conjunction with the judgment and decree in the earlier suit Ex. P2 & Ex. P3 clearly shows that there was land of Jasmer Singh in North; common street in South; Phirni in East; and Kutcha Bandh in West of house of the defendants measuring 60' x 42'. The said dimensions clearly tally with the site plan Ex. P1 relied upon by the plaintiffs/respondents. No site plan has been brought on record by the defendants during trial. However, at the time of arguments, a site plan has been placed on record seeking permission to lead the said site plan in evidence. However, a perusal of the said site plan shows that house of the defendants has been expanded to 61' in the North and 78' in the South instead of 42' in the North and South, to include the construction made by the defendant. Thus just to justify the encroachment made by them into their own land, the width of the Kutcha Bandh (blind street) has been reduced to 5' has instead of 10', as reflected in the site plan Ex. P1. Thus, the said site plan cannot be relied upon, since the dimensions of the house of the defendants as per their own claim is 60' x 42', as per Ex. P2 and Ex. P3.

12. Even otherwise, a perusal of the cross-examination of defendant, Som Parkash, appearing as DW1 would show that he admitted that the house of Balbir, Vinod and Prem is situated towards East of the Kutcha

Bandh. He nowhere claimed any land in west of the Kutcha Bandh. However, he did not deny that in the earlier suit, the dimensions of their house was settled as 60' x 42', as per their own claim. Rather, he pleaded ignorance about the same. Thus, I am of the considered view that the learned trial court has rightly believed the claim of the plaintiffs regarding encroachment on the Kutcha Bandh and ordered the defendants to remove the said encroachment from the portion shown by letters GHJCKB and LMAN in the site plan.

13. So far as the claim of the plaintiffs regarding possession of the part of the court-yard of their house, shown by letters EFGHJD in the site plan as well as mesne profits for its illegal use and occupation by the defendants, is concerned, there is nothing on record to show that the portion shown by letters EFGHJD in the site plan Ex. P1, is a part of the court-yard of house of the plaintiffs or owned by them. Thus, in the absence of any cogent evidence on the file to prove the ownership of the plaintiffs with regard to the portion shown by letters EFGHJD in the site plan Ex. P1, it cannot be held that the plaintiffs are entitled to the possession of that property or to claim mesne profits for its illegal use and occupation by the defendants, as has rightly been observed by the learned trial court. Hence, there being no illegality or perversity in the impugned judgment and decree of the learned trial court, the same deserves to be affirmed.”

9. The findings recorded by the trial Court and as affirmed by the First Appellate Court, are purely the findings of facts. Learned counsel for the appellants could not point out any material irregularity or illegality in the aforesaid findings while appreciating the evidence, or any evidence which was not taken into consideration. As such, this Court does not find any ground whatsoever to disturb the concurrent findings of facts, which are found to be based upon proper appreciation of evidence on record. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

September 19, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No