



RSA-2172-2025 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA-2172-2025 (O&M)  
Date of decision : 24.07.2025**

Jai Kishor

...Appellant

Versus

Mukesh Kumar and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Johan Kumar, Advocate for the appellant.

**HARPREET KAUR JEEWAN, J. (Oral)**

1. Appellant-defendant No.1, Jai Kishor, has preferred this regular second appeal against the judgment and decree dated 16.01.2025 passed by learned District Judge, Palwal (*hereinafter referred to as the 'First Appellate Court'*), whereby, the appeal filed by the appellant challenging the judgment and decree dated 31.01.2023 passed by learned Civil Judge (Junior Division), Palwal (*hereinafter referred to as the 'trial Court'*), thereby decreeing the suit filed by plaintiff-respondent No.1, Mukesh Kumar, was upheld.

2. Respondent No.1-Mukesh Kumar filed a civil suit for permanent injunction against appellant-defendant No.1, seeking injunction that the appellant be restrained from creating hindrance in a public passage. The appellant as well as respondent-defendant No.5, Municipal Council, Hodal, contested the civil suit. Issues were framed. Both the parties led evidence and the trial Court decreed the suit, restraining the defendants from encroaching upon the passage marked



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as 'ABCD' as shown in the site plan, Ex.P-1. The appeal filed by the appellant-defendant No.1 was also dismissed, affirming the said findings given by the trial Court.

3. There are concurrent findings by the trial Court as well as by the First Appellate Court that plaintiff is entitled for the permanent injunction prayed for, while holding that the existence of passage stands duly proved through the evidence led by the plaintiff-respondent No.1 and he, being an inhabitant of the area, is well within his rights to file a suit to protect the passage.

4. Learned counsel for the appellant submitted that though, issue No.3 regarding maintainability of the suit was framed by the trial Court, but the trial Court has not considered the provisions of Section 91 of the Code of Civil Procedure, 1908 (for short, 'the CPC'), which specifically provides that in case of public nuisance, a suit for declaration and injunction can be instituted only by the Advocate General or with the leave of the Court by 02 or more persons. The learned counsel for the appellant submitted that the appellant-defendant No.1 has also taken a plea in the written statement that the suit is not maintainable. Learned counsel contended that maintainability of the suit is a legal question, but it has not been considered by the trial Court. It is further contended that in the ground of appeal also, a specific ground was taken to challenge the above findings, but even the First Appellate Court did not consider the said question of law.

5. I have considered the aforesaid submissions and perused the paper-book.



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6. The case of the plaintiff (respondent No.1-Mukesh Kumar) is that he is the owner-in-possession of a residential house situated in Friends Colony, Hodal; his tax assessment number is 1333 and it is situated within the area of Municipal Council, Hodal. He has taken a plea that the appellant and other private respondents in collusion with the respondent-Municipal Council are trying to encroach upon a public passage and they want to merge the same in their own plot/house. As per the site-plan (Annexure A-1) (Ex.P-1 before the trial Court), the house of the plaintiff-respondent No.1, Mukesh Kumar, is reflected as 'XYZZ-I' and the passage in question is reflected as 'ABDC'. The said site-plan would indicate that property of the appellant-Jai Kishor is situated on both sides of the said disputed passage, i.e. on northern side, there is a house of Jai Kishor and on southern side, there is a plot of Jai Kishore. The said passage also connects to the passage which is situated in front of the house of plaintiff-respondent No.1, Mukesh Kumar, as such, he himself is an aggrieved person on account of the alleged act of the appellant for blocking the said passage by merging his 02 properties situated adjoining the said passage.

7. In such circumstances, it cannot be said that the suit filed by the plaintiff is hit by the provisions of Section 91 CPC having not been instituted by a competent person. The provisions of Section 91 CPC are reproduced as under:-

*“In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-*



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*(a) by the Advocate-General, or  
(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.”*

8. The said provisions would be applicable only in cases, where a suit is to be instituted for seeking declaration or injunction or any other relief, in case of “(a) public nuisance or (b) other wrongful act affecting, or likely to affect, the public”.

9. In the present case, plaintiff-respondent No.1 has filed the civil suit seeking injunction for a public nuisance, but he himself is an aggrieved person as his house is situated in that area and the passage in question is connected to the passage opposite to his house.

10. In view of the aforesaid circumstances, the objection raised by learned counsel for the appellant has no merits.

11. The findings returned by learned trial Court as well as by the First Appellate Court do not require any interference. The suit has been rightly decreed.

12. The present appeal has no merits and accordingly, the same stands dismissed.

13. Decree be drawn accordingly.

14. Pending miscellaneous application(s) shall stand disposed of.

24.07.2025

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**[HARPREET KAUR JEEWAN]  
JUDGE**

Whether speaking / reasoned :  
Whether Reportable :

Yes                      No  
Yes                      No