



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

118

**RSA No. 2251 of 2025 (O&M)  
DATE OF DECISION :- 09.10.2025**

**Hari Ram (since deceased) through his LRs and others**

**...Appellants**

**Versus**

**Saneh Pal and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

**Present:-** Mr. Pardeep Goyal, Advocate for the appellants.

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**VIRINDER AGGARWAL, J. (Oral)**

1. This Regular Second Appeal has been preferred by the appellant defendants against the judgment and decree passed by learned Additional District Judge, Sangrur dated 01.02.2025 whereby the judgment and decree passed by learned Civil Judge (Junior Division), Sunam is reversed and suit of the respondent plaintiff was decreed.

2. Briefly stated, a suit for permanent and mandatory injunction was filed by the plaintiffs claiming that the disputed site as shown in the site plan is public street bearing Nos. 597(0-3), 588(0-4) and that they are using passages for ingress and egress to their property. The property of appellant defendants abuts the passages. They have no right to create any kind of obstruction in the passage or to encroach upon the passage. Appellant defendant No. 1 has put some earth in passage bearing No. 597 to raise the level and appellant defendants No. 2 and 3 have constructed a Khurli at point A1 shown in the site plan Annexure 'X' in passage bearing No. 588



illegally and forcibly. The encroachments are required to be removed and passages are to be restored to its original position, hence the suit. Suit was contested by appellant-defendants claiming that suit is not maintainable for non-joinder of necessary parties; that answering defendant has not encroached upon any portion of the passage in fact Gram Panchayat has merged major portion of the street in its land and the same is required to be vacated and that plaintiffs have filed the suit by stating wrong facts and intends to encroach upon the suit property. The passage in Khasra No. 597 is being used by defendant No. 1 and the passages were carved out by deducting land out of the land of Ruris of the defendants and others and plaintiff has no concern with the passage. Defendant No. 1 has not raised the level of the passage. The earth was filled in the land owned by defendant No. 1 whereas defendants No. 2 and 3 contended that plaintiffs has encroached upon the land of Panchayat and has submitted the wrong site plan. Plaintiffs has no right to use the streets in question; defendants has every right to raise the level of street; plaintiffs has no connection with the same.

3. From the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiffs are entitled to joint possession, as prayed for? OPP.
2. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP.
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD



5. Whether the plaintiffs have not come to the court with clean hands and have concealed the material facts from this court? OPD

6. Whether the plaintiffs are estopped by own act and conduct from filing the present suit? OPD.

7. Whether the suit is not within the period of limitation? OPD.

8. Whether the suit is liable to be dismissed for mis-joinder and non-joinder of necessary parties? OPD.

9. Whether the plaintiffs have not paid the proper court fee? OPD.

10. Relief.”

4. Both the parties were granted opportunities to lead evidence.

5. The learned Civil Judge dismissed the suit of the plaintiffs by recording findings that Gram Panchayat is necessary party and Gram Panchayat has not been joined in the suit so suit is bad for non-joinder of necessary parties and that demarcation was conducted only of the Street Nos. 588 and 597 and from the same it cannot be concluded that defendants have constructed a Khurli in street No. 588 and has encroached upon street No. 597.

6. Aggrieved by the judgment and decree so passed respondent plaintiffs preferred appeal. The learned First Appellate Court allowed the appeal and it was concluded that suit is duly maintainable as plaintiffs are only seeking relief regarding removal of encroachment of the defendants from the public passage and that it is duly proved from the report of demarcation that passages have been encroached upon by the defendants. So the appeal was allowed and judgment and decree passed by learned Civil Judge was set aside and suit of the appellant plaintiff was decreed.



7. Aggrieved by the judgment and decree so passed by the First Appellate Court, the present regular second appeal has been filed.

8. Learned counsel contended that the learned First Appellate Court has wrongly ignored the fact of non-joinder of Gram Panchayat; Gram Panchayat is owner of public passages in Khasra Nos. 597, 588.

9. All the inhabitants of the village has right to use the public passages and it is established on record that passages in question are being used by respondent plaintiffs. So Gram Panchayat in a suit for permanent and mandatory injunction is not a necessary party and the learned First Appellate Court has rightly held that suit can legally proceed even without joining Gram Panchayat owner of public passages. Learned counsel further contended that plaintiffs has no right to use the passage as the shops of the plaintiffs abut on the main road. No doubt it is clear that shops of the respondent plaintiffs open on main road leading to village Rattangarh but that does not mean that plaintiffs have lost right to use the public passage in question for approaching their shop in case there are two passages available to the plaintiffs then the Court cannot non-suit the plaintiffs and cannot compel the plaintiffs to use only main passage leaving the alternative passage for encroachment by the appellants. The existence of passages in Khasra Nos. 588, 597 is duly proved from jamabandi entries Ex.P20 and site plans Ex.P1, P2, D3 and D5 proves that the passages goes upto the shops of the plaintiffs. No doubt plaintiffs have other passage also for their shop. Learned counsel further contended that it is not proved on record that appellant-defendants has encroached upon passages whereas a perusal of report of Local Commissioner Ex.P17 clearly shows that there is a Khurli put up in the passage in Khasra No. 588 by defendants No. 2 and 3 and that



defendant No. 1 has raised the level of passage of Khasra No. 597. Even from the report of Tehsildar Ex.P21 and P21/A it is proved that Khurli is put up in Khasra No. 588 by Tara Mall and in Khasra No. 597 Hari Ram has raised the level of passage and thereby encroached the passage. Learned Civil Judge has discarded the report of Local Commissioner only on the grounds that only demarcation of Street Nos. 588 and 597 was carried out and the demarcation of the land of the defendants was not carried out whereas it is accepted by the Court that in report defendants are shown to have put up a Khurli in Street No. 588 and having encroached Street No. 597. Land of defendants was not required to be demarcated.

10. Therefore, considering all the pleadings and evidence on record it is clear that no substantial question of law arises and further more the First Appellate Court has not misread the evidence. Findings are based upon correct appraisal of pleadings and evidence on record. No interference is warranted in the findings recorded by the learned First Appellate Court. As such, the appeal stands dismissed.

11. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

**(VIRINDER AGGARWAL)**  
**JUDGE**

**09.10.2025**

*P.Singh*

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No