



[129]

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

RSA-1294-2018 (O&M)

Date of Decision :29.07.2025

Kulwant Singh

...Appellant

versus

Amrik Kaur and others

....Respondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. G.S. Sirphikhi, Advocate for the appellant.
Mr. B.S. Randhawa, Advocate for respondent No.1.

PANKAJ JAIN, J. (ORAL)

[1] Defendant No.1 is in appeal.

[2] For the convenience, parties hereinafter are referred to by their original position(s) as in the civil suit i.e. appellant as defendant No.1 and respondent No.1 as plaintiff and respondent Nos.2 to 6 as defendant Nos.2 to 6, respectively.

[3] Plaintiff filed suit seeking decree of permanent injunction restraining the defendants from interfering in the possession of the plaintiff and/or from opening any door, window or ventilator on the southern side of property marked as ABCDE in the site plan attached to the plaint.

[4] As per the case of plaintiff, she is absolute owner in possession of the property ABCDE constructed over land comprised in *khasra* Nos.100



and 101/1 measuring 01 Kanal. She claims that defendants have no right, title or interest in the said property and the house of defendants is situated on the southern side of the suit property. Despite having no right to interfere in the property of the plaintiff, the defendants want to open door, window and ventilator towards the property owned by the plaintiff.

[5] Suit was contested by defendants, denying that the plaintiff is owner of the land in question. As per the defendants, Gram Panchayat was owner of the suit property and the same was allotted to the father of defendant Nos.1 & 2 vide resolution dated 15.03.1989. After death of their father-Kartar Singh, defendant Nos.1 & 2 came in possession thereof. As per defendants, the land in their possession is situated within *lal lakir* and they have no concern with the land compromised in Khasra No.100 and 101/1. Defendants claim that they are in possession of the land allotted to them by Gram Panchayat and have every right to open doors, windows or ventilators in their own construction.

[6] Court of the first instance put the suit filed by the plaintiff to trial, framing following issues:-

- “1. *Whether the plaintiff is entitled to the relief for permanent injunction as prayed for? OPP*
2. *Whether the present suit is not maintainable in the present form? OPD*
3. *Whether the plaintiff has got no locus standi to file the present suit against the defendants? OPD*
4. *Whether the plaintiff has not come to the Court with clean hands? OPP*



5. *Whether the suit of the plaintiff is infructuous? OPD*
6. *Relief. ”*

[7] Returning finding on Issue No.1, Trial Court found that as per the admitted case, the land in question was allotted to father of defendant Nos.1 & 2 by Gram Panchayat on 15.03.1989 which is situated within *Lal Lakir*. The land of the plaintiff bearing *khasra* Nos.100 and 101/1 is a different parcel of land from the land allotted to father of defendant Nos.1 & 2 and the plaintiff has no title or ownership over the land in possession of defendant Nos.1 & 2. Therefore, no injunction can be granted.

[8] Unsuccessful plaintiff preferred the appeal. Learned Appellate Court reversed the findings recorded by the Trial Court, holding that the allotment itself is in dispute without there being any permission of Director (Panchayat) or the Deputy Commissioner. The defendant Nos.1 & 2 having failed to establish that the southern side of the house of plaintiff is in ownership of defendant Nos.1 & 2, they have no right, title or interest to open door, window, ventilator etc. on southern side. Reversing finding on issue No.1, the learned Appellate Court *set aside* the judgment passed by the Trial Court, allowing the appeal preferred by the plaintiff.

[9] Counsel representing the appellant has assailed the findings recorded by the learned Lower Appellate Court.

[10] It has been contended that the specific stand taken by the defendants was that they have no concern with the land claimed to be owned and possessed by plaintiff comprising *khasra* Nos.100 and 101/1. No effort



was made by the plaintiff to get the land demarcated to show that the defendant Nos.1 & 2 were in possession of any portion thereof. It stands proved on record that the land in possession of defendant Nos.1 & 2 was allotted to their father by Gram Panchayat and they have constructed house thereupon. Reliance is being placed upon ratio of law laid down in '**Smt. Anguri and others versus Jiwan Dass and another**', reported as 1988 AIR (Supreme Court) 2024, to submit that if one party open windows towards other's property, the other person has no right to seek injunction though has a right to raise wall.

[11] *Per contra*, counsel for respondent No.1 submits that ratio of law laid down in '**Smt. Anguri and others**' case (*supra*) would not be applicable keeping in view that the land in possession of defendant Nos.1 & 2 was allotted to their father by the Gram Panchayat.

[12] I have heard counsel for the parties and have carefully gone through records of the case.

[13] Lower Appellate Court decreed the suit filed by the plaintiff reversing findings recorded by the Trial Court on Issue No.1. Raising doubts about the allotment made in favour of the father of defendants No.1 and 2, despite there being no challenge to the same and the allotment not in issue. Allotment in favour of father of defendants having not been challenged by the plaintiff or by Gram Panchayat in any proceedings and the resolution, Exhibit D-1 not having been resiled or annulled, Lower Appellate Court erred in reversing finding on Issue



No.1. The same is ordered to be reversed. Finding recorded by Trial Court on Issue No.1 are restored.

[14] From the uncontroverted facts on record, it is evident that plaintiff claims to be in possession of portion ABCDE which is part of land comprised in Khasra No.100, 101/1. Defendants have specifically pleaded that they have no concern with the land comprised in Khasra No.100, 101/1. The land in possession of defendants is situated in *abadi deh*. No effort was made by the plaintiff to get the land comprised in Khasra No.100 and 101/1 demarcated. The primary issue relates to opening of door, window, ventilator etc. towards Khasra No.100 and 101/1.

[15] The issue regarding right of owner to open windows, doors and ventilators in his property is nor more *res integra* and has been answered by Supreme Court in *Smt. Anguri's* case (supra) observing as under:

“As far as the question of opening of new windows is concerned, it is open to the defendants to use their property in any manner permitted by law; and hence they cannot be restrained from opening new windows, as no customary right of privacy appears to have been pleaded or proved. This position is not disputed by the plaintiffs. It is, however, equally clear that, if the defendants open any new windows, the plaintiffs are fully entitled to block the same by raising the height of the walls and the defendants are not entitled to break or damage the said walls or any portion thereof so as to remove the obstruction to their new windows.”



[16] In view thereof, this Court finds that the plaintiff has no right to seek injunction against the defendants to restrain them from opening windows, or ventilators or doors in their property. It is for the defendants to use their property in any manner permitted by law. Plaintiff though shall be within his right to block the same by raising height of his walls or by raising walls in the property owned by him.

[17] As a sequel of the discussed held hereinabove, the present regular second appeal is allowed. The judgment and decree passed by the Lower Appellate Court, is set aside. The judgment and decree passed by the Court of First Instance, is hereby restored.

[18] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

29.07.2025
'R. Sharma'/Dpr

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