

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-932-2022 (O&M)
Reserved on : 19.02.2025
Pronounced on : 17.03.2025**

Shakuntala Rani (deceased) through LRAppellant

VERSUS

Vasu Devi Khurana and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Mittal, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 09.09.2011 passed by the Trial Court and judgment and decree dated 26.10.2021 passed by the First Appellate Court whereby her suit for permanent injunction has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the suit averring that she is owner in possession of a three-storey shop with basement measuring 37.9 sq. yards situated at Sant Colony, Railway Road, Bahadurgarh, District Jhajjar. In the year 1997-98 the plaintiff-appellant constructed the three-storey shop with basement after getting the site plan sanctioned from the Municipal Committee, Bahadurgarh. According to the plaintiff-appellant the defendant-respondents have their open land towards north and west of the building of the plaintiff-appellant and have threatened to construct their shop and give support to their roof by using the wall of plaintiff-appellant and also construct a

basement. The plaintiff-appellant apprehended that her wall may collapse in the rainy season and damage her building. Hence, the suit for permanent injunction. In the written statement defendant-respondent No.1 raised preliminary objections of maintainability, cause of action, not coming to court with clean hands, etc. On merits it was the stand taken that the plaintiff-appellant was not the owner of the building, and her construction was against the bye-laws. It was the stand taken that the husband of the plaintiff-appellant was an Ex-Municipal Commissioner, and he had got the site plan sanctioned using his influence. It was stated that the plaintiff-appellant had demolished the original common wall of 25 feet in length and 13.5” width and raised a common wall of 9” width by including 4.5” from the wall of the defendant-respondents. The sanctioned plan of the plaintiff-appellant also showed a common wall of 13.5” width. According to the defendant-respondents the wall was a common wall to whose use there should be no objection. The construction being undertaken would strengthen the building and there was no risk involved. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether plaintiff is owner in possession of the shop in question fully detailed and described in para No.1 of the plaint ? OPP
2. Whether the plaintiff is entitled to the decree of permanent injunction on the ground as alleged in the plaint ? OPP

3. Whether the present suit is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff has not come to the court with clean hands and not entitled to the discretionary relief of injunction ? OPD
6. Relief.

4. The Trial Court vide judgment and decree dated 09.09.2011 dismissed the suit holding inter-alia that the plaintiff-appellant had not been able to prove how much area was purchased since the original sale deed was not produced and also that the wall was a common wall. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant. On 11.10.2021 the First Appellate Court framed the following issued no.1A :

- 1A. Whether the Wall marked with letters DAB is exclusively owned and possession by the plaintiff ? OPP

The appeal of the plaintiff-appellant was dismissed by the First Appellate Court vide judgment and decree dated 26.10.2021. Hence, the present regular second appeal by the plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the wall belonged solely to the plaintiff-appellant and by putting load on it the defendant-respondents were causing damage to the entire building and making it unsafe and therefore the suit deserved to be decreed.

6. Heard.

7. In the present case both the Courts have held that the plaintiff-appellant failed to prove her ownership over her shop. No sale deed was produced in evidence by her. The Courts have also held that the plaintiff-appellant had failed to prove that the wall was exclusively owned by her and was not a common wall. The shop of the defendant-respondents was already in existence when the building plan of the shop of the plaintiff-appellant was got sanctioned. Since the wall has been held to be a common wall, the defendant-respondents have a right to use it in a reasonable way provided it does not cause damage to the other co-owners of the common wall. The plaintiff-appellant would have a cause only if it is proved to the satisfaction of the Court that the construction to be raised by the defendant-respondents would cause damage to the building of the plaintiff-appellant. No such cogent and reliable evidence has been pointed out by counsel for the plaintiff-appellant. In absence of any evidence in this regard, the plaintiff-appellant is not entitled to the injunction restraining the defendant-respondents from raising any construction on the common wall. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No credible and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

8. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires

determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.03.2025

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO