

2025:PHHC:008013



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

**RSA-821-2021 (O&M)
Reserved on : 08.01.2025
Pronounced on : 21.01.2025**

JATINDER KUMARAppellant

VERSUS

PREM CHAND (DECEASED) THR LRS AND ANRRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vishal Aggarwal, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging concurrent findings returned by the Trial Court vide judgment and decree dated 28.02.2018 and by the First Appellate Court vide judgment and decree dated 21.09.2019.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein set up a case that he is owner in possession of property bearing No.39 and 39/1 situated at Kurti Bazaar (also known as B-I Bazar) Jalandhar Cantt. measuring two and a half marlas as detailed in the head note of the plaint on the basis of a Will dated 04.03.1996. It was further the case that the house of defendant-respondent No.1 is situated on the Southern side of the house of the plaintiff-appellant and was abutting the property of the plaintiff-appellant. It was further averred in the plaint that the plaintiff-appellant was working as UDC in the Army and was posted in Bhutan and at the time of filing of the suit at Chandigarh and therefore by taking advantage

of the absence of the plaintiff-appellant, defendant-respondent No.1 demolished the front portion of the property in question and raised illegal encroachment in the front portion of the suit property. It was further averred that though the property of defendant-respondent No.1 measures 309 square feet however he is in possession of excess property.

3. On notice the defendant-respondent No.1 filed written statement denying all the averments made in the plaint. It was denied that defendant-respondent No.1 is in possession of more than his share. Defendant-respondent No.2 – Jalandhar Cantonment Board – filed a separate written statement denying all the averments made in the plaint. It was pleaded that property Nos.39 and 39/1, as per the General Land Register, is bearing Survey No.489/161 and the total area of the property is 560 square feet. It was further the case that the land is owned by the Union of India and is under the management and control of Cantonment Board, Jalandhar Cantt. It was further the case that the occupancy rights were given to one Jatinder Kumar and that there was no information given to them qua encroachment nor any complaint had been filed.

4. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether the plaintiff is entitled for mandatory injunction as prayed for ? OPP
3. Whether the suit is not maintainable ? OPD

4. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from this Court ? OPD

5. Whether the plaintiff has got no *locus standi* to file the present suit ? OPD

6. Whether the suit is false, frivolous and has been filed to drag the defendant ? OPD

7. Whether the plaintiff has been estopped by his own act and conduct ? OPD

8. Relief.

5. The Trial Court vide judgment and decree dated 28.02.2018 dismissed the suit with costs. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 21.09.2019. Hence, the present regular second appeal by the plaintiff-appellant.

6. The learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit. It is further the contention that the plaintiff-appellant is in possession of his property and that defendant-respondent No.1 had illegally demolished and encroached upon his property. It is further the contention that the Building Expert, namely, Gelbert Gibson (PW-6) had proved on record documents Ex.PW-6/1 to Ex.PW-6/4 and had specifically earmarked the area in red on which the encroachment had been made.

7. Heard.

8. In the present case it was observed by both the Courts that earlier a suit had been filed which was between the same parties and qua the same cause of action. Plaint in the said suit was Ex. D-1, copy of the statement was Ex. D-2 and copy of the order dated 26.08.2006 was Ex. D-3. The said suit was withdrawn by the plaintiff-appellant on a statement (Ex. D-2) suffered by his counsel and vide order dated 26.08.2006 (Ex. D-3) the suit was withdrawn. The statement (Ex. D-2) was admitted by the plaintiff-appellant himself. Further still, in the entire plaint there was not a whisper regarding when the alleged construction was raised. Even in his cross-examination as PW-5 the plaintiff-appellant himself admitted that he had not given any detail as to when the alleged construction was raised. He has further admitted having knowledge of the fact that Prem Chand (the defendant-respondent) against whom the suit was initially filed had died at the time of filing of the suit. It was further the stand taken that the suit was filed against the legal representatives of Prem Chand. The Court found that the plaint in the present case revealed that the same had been filed against Prem Chand who to the knowledge of the plaintiff-appellant had already died at the time of filing of the suit. It was only subsequently that the amended title was filed. Hence, it was held that the suit against the dead person was not maintainable. The Courts further found that there was not an iota of evidence on the record to prove the alleged encroachment on the suit property. Learned counsel for the plaintiff-appellant has not been able to convince this Court otherwise. No cogent and reliable evidence has been pointed out to establish the case set-up

by the plaintiff-appellant. In view thereof, no fault can be found with the judgments and decrees passed by both the Courts concerned.

9. In view of the above, I do not find any merit in the present appeal. 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.

21.01.2025

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*