

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****122****RSA-858-2021 (O&M)****Date of decision: 08.04.2025****Kulwinder Kaur and another****...Appellant(s)****Vs.****Avatar Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

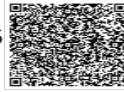
Present:- Mr. Vipin Mahajan, Advocate for the appellants.

NIDHI GUPTA, J.

The defendants are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the respondent/plaintiff for mandatory injunction directing the defendants to remove illegal encroachment in the public street, has been partly decreed by both the Courts below. Vide the impugned judgments and decrees; the counter claim of the appellants/defendants for mandatory injunction directing the respondent/plaintiff to remove the illegal projection raised at point 'XY' in the private street marked as ABCD in the site plan, has also been dismissed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants'; and respondent is the 'plaintiff'.

3. Brief facts of the case as pleaded in the plaint are that the plaintiff is owner in possession of the house marked as EFGH in the site plan Ex.P1 produced by the plaintiff. The plaintiff is residing there with his family.



Public street marked as ABCD exists on the western side of the plaintiff's house and is used by the plaintiff for ingress and egress to his house. The house was purchased by the plaintiff and his brother Paramjit Singh from Balwant Singh through Sale Deed dated 04.07.2001 Ex.D1. Father of the defendant No.1 (and father-in-law of defendant No.2) had previously filed a suit for mandatory injunction regarding the present street in question, which was dismissed as withdrawn vide judgment and decree dated 30.07.2010. It was alleged that after dismissal of the said suit, the defendants had forcibly blocked the plaintiff door at point 'C' by constructing a 4 feet high wall; thereby reducing the door height to 2 feet and blocked the access of the plaintiff into the street. It was also alleged that defendants had also affixed angle at point 'A' and slab at point 'D' in the plaintiff's wall illegally and forcibly with police support. The plaintiff has served legal notice dated 28.09.2010 to remove the illegal encroachment but the defendants did not comply. Hence the present suit was filed on 17.11.2010.

4. Upon notice, defendants had resisted the suit by filing written statement and counter-claim disputing the averments made by the plaintiff. It was alleged that the street in question marked as ABCD was the private street of the defendants to which the plaintiff had no right, title or interest. It was stated that the house of the defendants was to the west of the house of the plaintiff; whereas the access of the plaintiff to his house is from the eastern side. The street marked as ABCD in the site plan is the private street of the defendants which exists to the west of the house of the plaintiff. It is



admitted that the suit property in which the house of the plaintiff exists was purchased by the plaintiff from Balwant Singh on 04.07.2001 Ex.D1, which clearly shows that the access of the plaintiff is from the eastern side and plaintiff has no concern with the street which exists on the western side i.e. towards the house of the defendants. In actual fact, father of defendant No.1 had purchased 3 plots on 05.12.1998 and one plot on 15.09.2004. It was further submitted that the projection made by the plaintiff at points 'XY' in the site plan Ex.P1 was illegal and liable to be demolished. It was stated that the plaintiff had filed the suit with motive to use the private street of the defendants by dragging them to Court; and accordingly, dismissal of the suit was prayed for.

5. On the basis of pleadings of the parties, issues were reframed as follows: -

- “1. Whether plaintiff is entitled to the relief of mandatory injunction as prayed for ?OPP
2. Whether plaintiff has concealed material facts from the Court, if so its effect ?OPD
3. Whether suit is not maintainable ?OPD
4. Whether counter-claimants/defendants are entitled to mandatory injunction as prayed for ?OP-Counter claimants/defendants.
5. Relief.”

6. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided Issue No. 1 in favour of the plaintiff “*to the extent that directions are given to the defendants to remove wall constructed in front of the gate of the house of the plaintiff and other relief*”



is decided in favour of the defendants"; Issues No.2, 3, and 4 were decided against the defendants/counter-claimant; and accordingly, vide judgment and decree dated 20.09.2017, the learned trial Court partly decreed the suit of the plaintiff and *"defendants are directed to remove the wall constructed in front of the gate of the house of the plaintiff or plaintiff himself is at liberty to remove the said wall, whereas counter-claim filed by the counter-claimants/defendants is hereby dismissed."* The appeal filed by the defendants was also dismissed with costs by learned Additional District and Sessions Judge at Gurdaspur vide judgment and decree dated 20.12.2019. Hence, the present second appeal.

7. Learned counsel for the appellants/defendants has been at great pains to impress upon this Court that vide the impugned judgments and decrees, the plaintiff has been directed to demolish the wall constructed in front of the gate of his house. It is repeatedly submitted by learned counsel for the appellants/defendants that the Local Commissioner had given his report that the street in question is a private street. It is contended that accordingly the learned Courts below could not have directed the appellants to remove the wall. It is submitted that in the Sale Deed of the plaintiff, although the defendants' house is shown but private street is not shown. It is reiterated that the said street is the private street of the defendants with which the plaintiff has no concern. It is the plaintiff who has raised illegal projection at point 'X' and 'Y' in the private street of the defendants, which is why the father of the defendant No.1 had been constrained to file the previous suit. However, the said suit was withdrawn



upon death of father of defendant No.1. Even the learned Courts below have given categoric concurrent findings that the plaintiff had failed to prove that the street shown in the site plan as 'ABCD' is a public street yet, liberty was given to the plaintiff to demolish the wall constructed in front of the gate. Even counter-claim of the defendants was dismissed. In deciding issue No.1, learned Courts below have failed to appreciate recital of Sale Deed dated 04.07.2001 Ex.D1 executed by Balwant Singh in favour of the plaintiff and his brother Paramjit Singh which shows the site of the house of the plaintiff in which street is only on the eastern side and on the western side plot-cum-house of the father of the defendants namely Sardar Singh is shown. The said site plan tallies with the site plan as Ex.D3 of the house of the appellants. There is no ingress and outgress on the western side of the house of the plaintiff, but the plaintiff has forcibly and illegally installed the gate and raised projection in the absence of the father of the appellant No.1. Therefore, approach of the learned Courts below by partly decreeing the suit has made illegal act of the respondent as legal, which is not permissible.

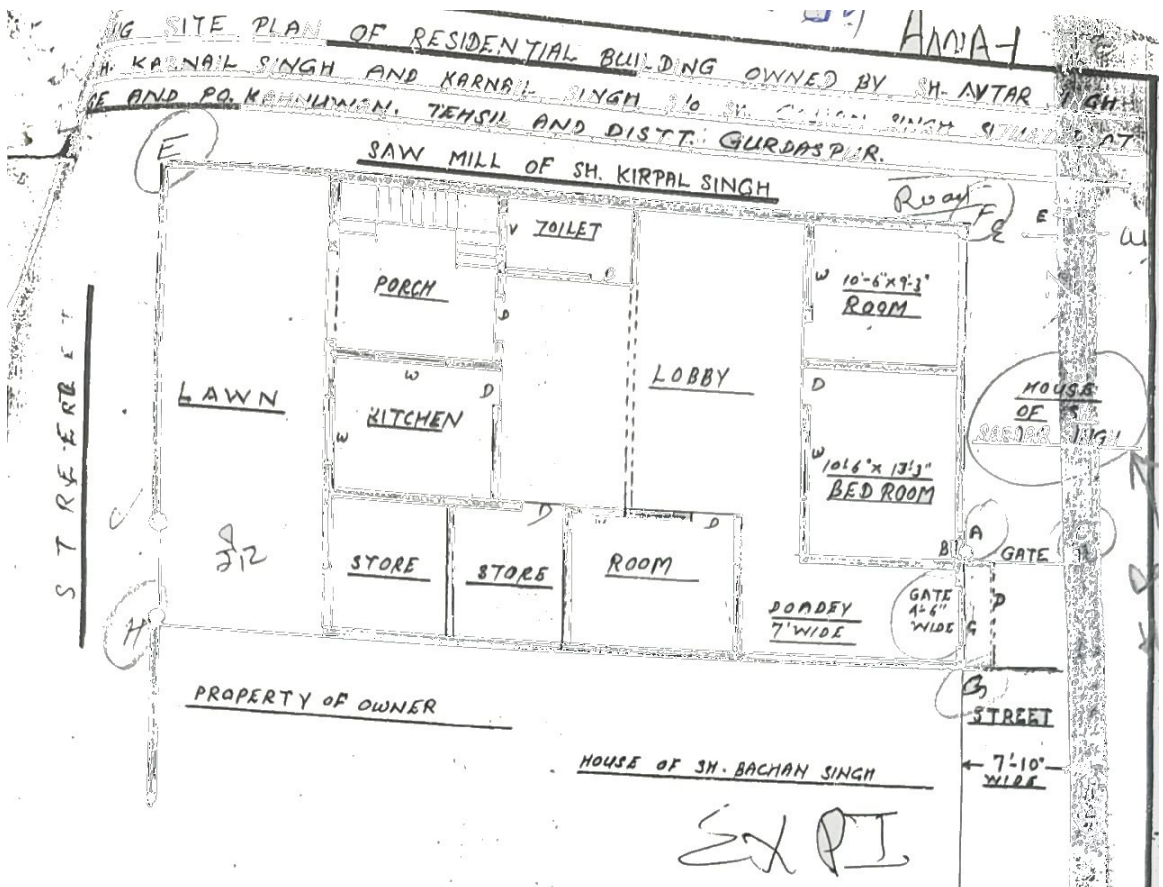
8. It is submitted that while deciding the counter-claim, learned Courts below have wrongly held that the defendants have failed to prove that the plaintiff has encroached upon the street in question. Even as per the Sale Deed dated 04.07.2001 Ex.D1, no street is shown on the western side; and street is shown only on the eastern side. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees of the learned Courts below be set aside.



9. No other argument is raised on behalf of the appellants/defendants.

10. I have heard learned counsel for the appellants/defendants and perused the case file in great detail.

11. I find no merit in the submissions advanced on behalf of the appellants/defendants. Before proceeding further, it will be helpful to understand the present dispute by way of site plan Ex.P1, which is as under:-



12. It is the plaintiff's case that there is a public street on the western side of the house of the plaintiff marked as 'ABCD' in the site plan which was used by the plaintiff for ingress and egress. To the contrary, it was the case of the defendants that the said street to the west of the house of the plaintiff and towards the house of the defendants, was a private



property of the defendants to which the plaintiff had no right; and that the public street was on the eastern side of the house of the plaintiff. To lay to rest to this controversy, learned trial Court had appointed Local Commissioner, who had submitted his report along with photographs Annexures C and D. As per the said photographs, it was found that there existed a gate on the back/West of the house of the plaintiff towards house of the defendants, which gate was not being used regularly. Even as per the evidence on record, plaintiff had failed to prove that the street on the west marked as ABCD towards the house of the defendants, was a public street. However, it was further the contention of the plaintiff that the defendants had constructed a 4 feet wall on the gate of his house which opened towards the private street; thereby obstructing the access of the plaintiff from the said gate. The defendants had denied raising such a wall. Accordingly, the Learned trial Court has noted in para 13 of the judgment and decree dated 20.09.2017 that *“as the defendants have not claimed any right regarding wall in question and they have no right, title or interest in the same and therefore, plaintiff is at liberty to demolish wall depicted as 'C' in the site plan Ex. P1 and the defendants cannot restrain the plaintiff for removing the wall in question. Further, contention of the plaintiff is that defendants have installed gate 'AB' depicted in the site plan Ex.P1 by affixing angle in the wall of the of the plaintiff. On the other hand, the defendants have denied the same. It may be mentioned here that plaintiff has failed to prove any evidence that defendants had affixed angle in his wall. Further, photographs Annexure C and D also reflect that defendants*



have installed gate by affixing angle into their wall and no encroachment has been proved by the plaintiff in this regard. Therefore, plaintiff cannot be given relief regarding removal of gate allegedly installed by the defendants in its buildings. Thus, plaintiff has failed to prove that street in question is a public street, however, plaintiff is at liberty to demolish wall constructed in front of the gate of his house. Accordingly, this issue is decided in favour of the plaintiff to the extent that directions are given to the defendants to remove wall constructed in front of the gate of the house of the plaintiff and other relief is decided in favour of the defendants” Thus, Learned trial Court had partly decreed the suit and defendants were directed to remove the wall constructed in front of the gate of the house of the plaintiff or plaintiff himself was granted liberty to remove the said wall, whereas counter-claim filed by the defendants was dismissed.

13. The appellants are not entitled to any relief also in view of the fact that the learned lower appellate Court further found that the defendants failed to bring on record any document to prove their ownership on the street in question. It was noted by learned lower appellate Court that it was the case of the defendants that the gate of the plaintiff was opening on to their private property. It was however, observed that needless to say, the said gate would not have been installed by the plaintiff in one day, yet no application was moved by the defendants at any stage, to any authority for restraining the plaintiff from constructing/installing the said gate. Accordingly, learned lower appellate Court had also held that in fact, the defendants had no right to construct



the wall in question which closes/obstructs the door of the plaintiff; and had accordingly dismissed the appeal of the defendants. It is further found that although the plaintiff had raised projection in front of his house, but it was not proved that the said projection encroached upon the defendants' private property. Furthermore, affidavit Ex.D5 filed in the previous civil suit No. 273 of 2006 did not support the defendants' case. Rather the said affidavit establishes the existence of street in question. It is also to be noted that the defendant No.2/DW1 had admitted in his cross-examination that door of the house of the plaintiff opens in the street in question though he had stated that the same was installed by the plaintiff in the defendants' absence. He has further admitted that water supply is going in and out of the street in question. He has also admitted the presence of septic tank in the street in question.

14. From the above facts, it is clear that the judgments and decrees of the learned courts below suffer from no error; and therefore, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed.**

15. Pending applications, if any, stand disposed of.

08.04.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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