



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1333-2024 (O&M)
DECIDED ON: 11.12.2025

NIRMAL SINGH

.....APPELLANT

VERSUS

JAGIR SINGH

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Chetan Bansal, Advocate
for the appellant.

MANDEEP PANNU, J (ORAL)

1. Present Regular Second Appeal has been filed by the plaintiff-appellant assailing the concurrent findings of fact returned by both the courts below, whereby the learned Trial Court, vide judgment and decree dated 08.02.2019, dismissed the suit of the plaintiff, and the learned Lower Appellate Court, vide judgment and decree dated 05.12.2023, affirmed the findings of the learned Trial Court while dismissing the appeal preferred by the plaintiff.

Brief facts

2. The plaintiff Nirmal Singh filed the present suit for permanent injunction alleging that he is the owner in possession of house bearing No. 229/2, Nagina Avenue, Near Ganda Singhwala, Near Valmiki Mandir, Majitha Road, Amritsar. According to the plaintiff, the defendant, who is his real brother, is in possession of the adjoining house bearing No. 229/1 situated in the same locality and between both the houses there exists a

common wall measuring 9 inches. The plaintiff averred that while he was carrying out lawful renovation and construction work in his house, the defendant along with some antisocial elements attempted to interfere and obstruct the said construction, claiming himself to be the owner of the common wall. It is further alleged that the defendant tried to demolish the construction being lawfully raised by the plaintiff and despite repeated requests not to take law into his own hands, the defendant continued with threats, thereby giving rise to the need for filing the present suit seeking permanent injunction restraining the defendant from causing interference in the plaintiff's peaceful possession and construction.

3. On the other hand, the defendant appeared and filed his written statement raising preliminary objections regarding the maintainability of the suit. While the relationship of the parties and the existence of the wall between the houses were admitted, the defendant denied the remaining allegations. The defendant contended that the plaintiff was attempting to raise construction over the wall belonging to the defendant and despite being asked not to construct illegally, the plaintiff threatened him with consequences. The defendant asserted that the plaintiff never maintained cordial relations at home and had no cause of action to file the present suit.

4. From the pleadings of the parties, the learned trial court framed the following issues:

(i) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

*(ii) Whether the suit of the plaintiff is legally not maintainable?
OPD*

(iii) Relief.

5. In support of his case, the plaintiff examined himself as PW1 and tendered his duly sworn affidavit Ex.PW1/A, reiterating all the facts mentioned in the plaint. He also examined Jatinder Singh as PW2, who similarly tendered his affidavit Ex.PW2/A and reaffirmed the facts stated in the plaint. Thereafter, the plaintiff's evidence was closed on 10.08.2018.

6. To rebut the plaintiff's evidence, the defendant examined Gurbachan Kaur as DW1, who stepped into the witness box and tendered her sworn affidavit Ex.DW1/A, reiterating the stand taken in the written statement. Mohinder Singh was examined as DW2 and tendered his affidavit Ex.DW2/A supporting the defence version. The defendant himself also stepped into the witness box as DW3 and tendered his affidavit Ex.DW3/A, reiterating all the averments of the written statement. Thereafter, the defendant closed his evidence.

Findings of the trial Court

7. The Court observed from the pleadings that the real dispute between the parties pertained only to the wall intervening their houses and the question that required determination was whether the wall in dispute was a common wall belonging to both parties or whether it exclusively belonged to the defendant. Since the plaintiff claimed that the wall was common, the burden rested upon him to prove such fact. However, during cross-examination, the plaintiff admitted that he had no proof regarding the ownership of his own house or of the wall over which construction was being raised by him. Even PW2, who is none other than the plaintiff's own son, conceded in cross-examination that he too had no proof to show that the wall in dispute was common between the parties. The Court further noted that although the plaintiff pleaded renovation of his drawing room, he failed

to establish that the wall was previously being used by him as a common wall or that any earlier construction by him existed upon it. On the contrary, DW2 stated that the portion in question belonged exclusively to the defendant, and DW1 supported the stand that the wall was raised and owned by the defendant alone. The Court concluded that there was no convincing evidence to establish that the wall was common, whereas the material brought by the defendant probalised his exclusive ownership. Consequently, Issue No.1 was decided against the plaintiff and in favour of the defendant. While considering the cumulative effect of the findings, especially the finding recorded under Issue No.1, the Trial Court held that the plaintiff had failed to establish his case on the file. The Court observed that since the plaintiff was unable to prove that the wall in question was a common wall, no injunction could be granted restraining the defendant from raising construction on what stood proved to be his own wall. Consequently, the suit was dismissed with costs.

Findings of the Lower Appellate Court

8. The lower appellate court, after re-appreciating the pleadings and evidence, upheld the findings of the learned trial court and dismissed the appeal. The court noted that the plaintiff had filed the suit seeking a permanent injunction on the basis that there existed a common wall of nine inches between the properties of the parties and that the defendant had interfered with the construction allegedly raised by the plaintiff on this wall. However, upon examination of the record, the appellate court found that the plaintiff completely failed to prove that the wall in dispute was a common wall. The court observed that during his cross-examination, the plaintiff (PW1) admitted that he had no writing, no document, and no proof to

establish that the wall was common between the parties. His only other witness, PW2, his own son, also admitted that he had no proof to establish the wall as common. No independent evidence was produced to show that the plaintiff or his predecessor ever used the disputed wall as a common wall at any point of time. On the other hand, the defendant consistently pleaded and proved through evidence that the wall in question exclusively belonged to him and formed part of his property. The appellate court also noted that there was no credible material on record to show that the defendant ever threatened to demolish the plaintiff's construction, as alleged. The entire case of the plaintiff rested only on self-serving averments unsupported by independent testimony. The appellate court re-affirmed the settled legal principles that the plaintiff must stand on his own legs, must prove possession and cause of action, and cannot succeed merely by pointing out alleged weaknesses in the defence. It held that the plaintiff had not established any violation of his possessory rights or any legal right requiring protection through an injunction. Consequently, the appellate court concluded that the trial court had rightly dismissed the suit, as the plaintiff failed to prove the existence of a common wall or any actionable grievance. The judgment and decree of the trial court dated 08.02.2019 were upheld, and the appeal was dismissed with costs.

9. Feeling aggrieved by the concurrent findings of the Courts below, the present appeal has been filed by the appellant.

Submissions of learned counsel for the appellant

10. Learned counsel for the appellant argued that the plaintiff had specifically sought the relief of permanent injunction restraining the defendant from causing any sort of interference or obstruction in the

renovation or construction being lawfully and legally raised by the plaintiff in his house bearing no. 229/2 as detailed in the head note of the plaint, and that there was no dispute regarding the fact that the plaintiff was renovating or raising construction within his own property. Yet, the trial court dismissed the suit in toto, and the lower appellate court affirmed the same without appreciating the limited nature of the relief claimed.

Findings of this Court

11. I have gone through the impugned judgments as well as the record produced before the Courts below. The matter has been examined in the light of submissions raised in the appeal, however, I am of the considered view that no ground is made out for issuance of notice to the respondent or for admitting this appeal.

12. The findings recorded by both the courts are based on a correct and proper appreciation of the pleadings and evidence on record. The appellant had approached the trial court seeking restraint against the respondent from causing obstruction in the renovation and construction being raised by him. The very foundation of the appellant's case rested on his assertion that there existed a 9-inch common wall between the house of the parties and that the respondent had no right to interfere with the construction over the said wall. However, both the courts below, on detailed examination of the oral and documentary evidence, have concurrently held that the appellant has failed to prove the existence of any such common wall.

13. The trial court returned a categorical finding that the appellant, on whom the burden of proof squarely lay, failed to produce any reliable document, site plan, revenue entry, earlier construction record, or any other cogent evidence to establish that the wall in question was ever treated as a

common wall between the parties. Even during cross-examination, the appellant admitted that he possessed no writing or authority to show that the wall belonged jointly to both parties. His own witness, PW2, who is none other than his son, also stated in clear terms that he had no proof to show that the disputed wall was common. The courts below have rightly held that in a suit for injunction, the plaintiff must independently establish his right and cannot rely upon perceived weaknesses in the defence.

14. The lower appellate court, while affirming the findings of the trial court, has elaborately discussed that the case of the appellant suffered from a complete absence of evidence regarding joint ownership or commonality of the wall. The appellate court has further recorded that the respondent took a consistent stand that the wall in dispute lies exclusively in his share of the property after partition and that the appellant has no right to raise any construction over it. This stand also remained unrebutted during cross-examination. It has been rightly held that except for the self-serving statements of the appellant alleging threats and obstruction, no independent witness or credible material was brought on record to support the version of the appellant. The lower appellate court has also observed that the appellant failed to establish any accrual of cause of action for filing the suit. The contention raised by the appellant regarding threat or obstruction by the defendant to the renovation or construction cannot be accepted. A perusal of the pleadings and evidence reveals that there does not appear to be any threat or obstruction by the defendant to the renovation or construction being carried out by the plaintiff inside his own house. The only dispute between the parties was confined to the wall in question, regarding which the plaintiff claimed a common ownership, whereas both courts below have concurrently

held on proper appreciation of evidence that the plaintiff failed to prove the wall to be a common one. Once the plaintiff was unable to establish the foundational fact that the wall was jointly owned, no cause of action survived for restraining the defendant from raising objection to construction upon a wall which stood proved to belong to the defendant. Apart from this wall-related dispute, there was no evidence of any interference by the defendant in construction or renovation within the plaintiff's property. Thus, the dismissal of the suit in its entirety by the courts below suffers from no illegality or infirmity.

15. Both courts have concurrently found that the appellant failed to prove possession over the disputed wall or any legal right to raise construction over it. The concurrent findings are based on appreciation of evidence, which is neither perverse nor illegal nor suffering from any material irregularity that may warrant interference by this Court.

16. Hence, the present Regular Second Appeal is dismissed.

17. All pending miscellaneous application(s), if any, stands disposed of.

11.12.2025

Poonam Negi

**(MANDEEP PANNU)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No