

(2012) 08 P&H CK 0235

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 437 of 2012

M/s Lekh Raj Narender Kumar

APPELLANT

Vs

Narender Pal and Others

RESPONDENT

Date of Decision: Aug. 22, 2012**Hon'ble Judges:** M. Jeyapaul, J**Bench:** Single Bench**Advocate:** I.K. Mehta, with Mrs. Ranjit Mehta, for the Appellant;**Final Decision:** Dismissed

Judgement

M. Jeyapaul, J.

This second appeal is by defendant No. 2. Plaintiffs in their suit for bare injunction have contended that they are owners in possession of the shops situated towards North and South of the suit property. The suit property is the blind alley and forms frontage of the shops of the plaintiffs and the plaintiffs have been using the same since the time of purchase thereof.

2. 1st defendant who is the Executive Officer of the Municipal Corporation has contended that the suit property is a thoroughfare and therefore, every person has a right to pass through the thoroughfare. Plaintiffs have in fact encroached upon a portion in the public street.

3. 2nd defendant in his written statement has contended that the suit property is a public street. 2nd defendant has a right to install his gate in the wall of his property. In his counter claim, 2nd defendant has sought for injunction restraining the plaintiffs from interfering with the suit property. He has also sought mandatory injunction directing the plaintiffs to remove the shed.

4. Though both the Courts below have decreed the suit of the plaintiffs for permanent injunction thereby restraining the defendants from interfering in the possession of the street in any manner and from demolishing the eastern wall, at the same time while partly allowing the counter claim preferred by defendant No. 2,

have held that the plaintiffs have in fact encroached upon the street and put up a shed though the plaintiffs have no right to put up any construction on the street and accordingly, a direction has been issued to the plaintiffs to remove the shed constructed by them in the street within a period of two months, failing which the defendants have been given liberty to seek the assistance of the Court, thereby giving liberty to the 2nd defendant to make an opening in his own wall but not in the wall of the plaintiffs.

5. Learned counsel appearing for the 2nd defendant would submit that the Courts below should have allowed the prayer of the 2nd defendant to install a gate in the wall. On a careful perusal of the judgments of the Courts below, it is found that that the Courts below have categorically held that the plaintiffs are bound to remove the shed put up by them in the street on encroachment but the 2nd defendant is entitled to put up a gate in his own wall but not in the wall of the plaintiffs. 2nd defendant cannot legally make a claim to have an opening through the wall of the plaintiffs. At the same time, 2nd defendant has every right to put up a gate in his wall. The Courts below have rightly decided the issues arisen in the suit. I do not find any merit in the appeal. No substantial question of law also has arisen for determination. Therefore, the appeal stands dismissed.