

CNR No. HRSO020015342018

CS-1158-2018

Naresh vs. Jasvir etc.

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HRSO020015342018



Presented on : 14-08-2018
Registered on : 14-08-2018
Decided on : 27-07-2026
Duration : 7 years, 11 months,
13 days

IN THE COURT OF
Civil Judge (Junior Division), Sonipat
Presided Over by Sh. Azad Singh
CS/1158/2018

Naresh S/o Sh. Balbir Singh S/o Sh. Mange Ram aged 56 years R/o
Village Rasoi, Sub Tehsil Rai, District Sonapat.

....Plaintiff

Versus

1. Jasvir S/o Sh. Hoshiar
2. Ved Parkash @ Bedhu S/o Sh. Phool Singh
3. Maya Devi wife of Sh. Ved Parkash @ Bedhu
4. Naveen S/o Sh. Rajender S/o Sh. Gyani, all residents of Village
Rasoi, Sub Tehsil Rai, District Sonapat.

.... Defendants

SUIT FOR DECLARATION WITH CONSEQUENTIAL RELIEF OF
PERMANENT INJUNCTION

Present: Sh. Surender Malik, Advocate for plaintiff.
Sh. Mahesh Pahal, Advocate for defendants No. 1 and 4.
Sh. O.P. Bhardwaj, Advocate for defendants No. 2 and 3.

Judgment:-

Present suit has been filed by plaintiff seeking a decree for

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declaration to the effect that the street in question existing between the houses of the parties to the suit is joint one and none of the parties to the suit have exclusive right to use the street in question and the defendants have no right to block the same and the defendant no.1 has no concern of any kind with the land of street and the defendant no.1 has no right encroach/merge the land of street existing towards western side of the plot of the plaintiff may kindly be passed in favour of the plaintiff and against the defendants, in the interest of justice. A decree for permanent injunction restraining the defendants from encroaching/blocking the street in question in their houses and also be restrained from merging the land of street in their properties may kindly be passed in favour of the plaintiff and against the defendants forever, interest of justice.

2. Shorn of unnecessary details, brief facts are that father of plaintiff purchased the plot measuring 61 sq. yds. with the dimension East to West-23 ft., North to South-24 ft. and bounded as East-Gher of Balbir Singh, West-Gali, North-Plot of Rajender Singh and South-House of defendant No. 4 Naveen situated in revenue estate of village Rasoi District Sonapat vide sale deed No. 2935 dated 13.10.1988 and thereafter, plaintiff also purchased plot measuring 75 sq. yds. with dimensions East to West-26.2 ft., North to South-25.10 ft., and bounded as East-House of Balbir (now plaintiff) West- Gali Sare Aam, North-House of Balbir Singh

(now plaintiff) and South-House of Bhim Singh situated in the revenue estate of Village Rasoi, District Sonapat and purchased vide sale deed No. 8755 dated 14.12.2004. During the lifetime of Balbir Singh, property inherited by the plaintiff which came in the share of the father of the plaintiff in family settlement and hence, plaintiff become the absolute owner. Defendant No. 2 purchased plot measuring 80 sq. yds. from Narender S/o Hardwari vide sale deed No. 1973 dated 05.07.1996 and defendant No. 3 purchased 52 sq. yds. from Heera vide sale deed No. 5130 dated 16.11.1998 and in both the sale deeds, there is specific recital qua existence of street in question and parties are using the property in the like manner. Earlier defendant No. 1 filed civil suit against defendant No. 2 seeking mandatory injunction claiming the exclusive ownership of the rasta in dispute and its existence from house of defendant No. 2 and 4 and its end in the plot of defendant No. 1. The suit was dismissed. In fact, the house of the plaintiff situated towards eastern side of street in question and except this street, there is no any other street for egress and outgress of house which was purchased by the father of plaintiff through sale deed No. 3235 dated 13.10.1998 and plaintiff has purchased another property vide sale deed No. 8755 dated 14.12.2004. It is also submitted that plaintiff has been using the street in question for all intents and purposes which have been made *pucca* by Panchayat. The property of defendant

No. 1 is dumped property and has not been using for any purpose. Defendant is adamant to encroach the street in question and also intended to merge the same in his property. No heed by paid by the defendant to the plaintiff to the genuine request of the plaintiff which constrained the plaintiff to file the present suit. Hence, the present suit.

3. The defendants were duly served and defendants No. 1 and 4 have filed joint written statement taking preliminary objections qua maintainability, locus-standi, cause of action, etc. It is submitted that the recital in the alleged sale deed is result of collusion and unilateral act of the parties and not binding on the rights of defendants. The present suit has been filed by plaintiff on the behest of defendant No. 2 against whom defendant No. 1 has filed the separate suit. Rest of the averments were specifically denied by the defendants and with these averments, they have prayed for dismissal of the present suit, being devoid on merits.

4. Defendants No. 2 and 3 have filed admitted written statement.

5. Replication was not filed. From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to the relief of declaration against the defendants, as prayed? OPP

2. Whether issue No. 1 is proved, whether the plaintiff is entitled to the

relief of permanent injunction against the defendants, as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form?

OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the plaintiff has no cause of action to file the present suit?

OPD

6. Whether the plaintiff is estopped from filing the present suit on the grounds, as alleged? OPD

7. Whether the plaintiff has concealed the true and material facts from this court and if so, its effect?

8. Relief.

6. In plaintiff evidence, plaintiff has examined himself as PW1 through his affidavit Ex. PW1/A and tendered documents Ex. P1 to P45 and also examined Rajender Singh as PW2 through his affidavit Ex. PW2/A. He also examined Ved Parkash as PW3, Sh. Ravinder Dangi as PW4, Rajender Singh as PW5 and Sh. Surat Singh as PW6. Learned counsel for plaintiff tendered documents Ex. P45 and Ex. P45/A and closed the plaintiff evidence, vide his separately recorded statement.

Documents tendered by the witnesses are as follows:-

Ex. P1	:	Copy of judgment dated 28.02.2019
Ex. P2	:	Copy of Decree-sheet
Ex. P3 & P4:		Site Plan

Ex. P5	:	Copy of plaint in case titled Jasbir vs. Hira & anr.
Ex. P6	:	Copy of written statement
Ex. P7	:	Copy of statement of Gandhi Ram
Ex. P8 to 15:	:	Statement of witnesses
Ex. P16 & 17:	:	Sale deed
Ex. P18	:	Register Intkal
Ex. P19	:	Copy of judgment dated 29.11.2002
Ex. P20	:	Copy of Decree-sheet
Ex. P21 to 37:	:	Photographs
Ex. P38	:	Sale deed
Ex. P39	:	Ikrarnama
Ex. P40	:	Site Plan
Ex. P41 to 44:	:	Photographs
Ex. P45	:	Copy of Aadhar Card of Naresh Kumar
Ex. P45	:	Document in Urdu
Ex. P45/A	:	Nakal Naksha Taksim

Thereafter, plaintiff evidence was closed by learned counsel for the plaintiff vide his separately recorded statement.

7. On the other hand, defendants examined Jasvir as DW1 through his affidavit Ex. DW1/A. He also examined Dharampal as DW2 through his affidavit Ex. DW2/A, Sandeep as DW3 through his affidavit Ex. DW3/A and Sh. Manoj Kumar as DW4 through his affidavit Ex. DW4/A and document Ex. D1 which is map. Learned counsel for defendants No. 1 and 4 tendered document Ex. DX which is pendrive and

closed the defendant evidence on behalf of defendants No. 1 and 4. Defendants evidence on behalf of defendants No. 2 and 3 closed by Court order.

8. No rebuttal evidence has been produced and the same is closed by learned counsel for plaintiff.

9. I have heard Ld. Counsels for the parties and have perused the record carefully. My issue-wise findings, with reasons thereof, are as follows:-

Issues no. 1 to 7:-

10. Onus to prove the issue no.1 and 2 is upon the plaintiff and issue no. 3 to 7 is upon the defendants as per maxim Affirmanti Non-Neganti Incumbit Probatio i.e. burden to prove lies on the person who assert not on whom who denies. The issues being connected and identical are taken up together.

11. Ld. Counsel for the plaintiff argued that plaintiff has duly proved on record that street in dispute exists in the north western side of property of the plaintiff as depicted in the sale deeds, site plan and report submitted by Local Commissioner. Its existence is also admitted in the previous litigation initiated by defendant No. 1 and which ended against him to the effect that street in dispute is common and not exclusively used by the defendant No. 1. Hence, plaintiff is entitled for the relief claimed in

the present suit.

12. On the other hand, Id. Counsel for defendant No. 1 and 4 argued that plaintiff is not entitled to get any relief against them. The plaintiff has concealed the material facts to the effect that in the eastern side of house of plaintiff, there exists the gali sare aam which is used by the plaintiff for ingress and outgress, however, in the pleadings, the plaintiff has categorically stated that there is no street for his ingress and outgress except the street in dispute. It is also argued that the manner in which the plaintiff is adamant to use the gali in dispute merely on the basis of recital in the sale deed of which defendant No. 1 is not party, in the manner that he forcibly and secretly installed the gate in the middle wall of the house of plaintiff and defendant No. 1 taking advantage of the fact that property of defendant No. 1 is vacant land. The malafide intent of the plaintiff is proved from the fact that he is adamant to make a forcible way from the property of the defendant. Hence, prayed for dismissal of the suit is made.

13. I have heard the arguments of Id. Counsel for both the parties and gone through the documents relied upon by either parties.

14. The plaintiffs have filed this suit on the ground that as per the recital in the sale deeds in favour of plaintiff/his predecessor, there exists a street around 4 ft. wide in the western side of plot of the plaintiff and its

existence is also came in question in the previous litigation initiated by defendant No. 1 himself. Plaintiff has also relied upon the report of Local Commissioner in which street in dispute is shown, however, upto the plot of defendant No. 1 and consequently also leading to the plot of the plaintiff. Since both the parties have relied upon the Local Commissioner report Ex. DX. It is relevant to refer the observation of Local Commissioner which is to the following effect:-

I, undersigned, was appointed as Local Commissioner in the above noted matter by this Hon'ble Court vide its order dated 23.09.2025 with the direction to visit the spot and to prepare the report about the existing state of affairs of the house of the plaintiff Naresh, street in dispute and street situated towards the Eastern side of the house of the plaintiff.

As directed by the Hon'ble Court, prior notice was given to the respective counsels of the parties on 11.11.2025 thereby intimating them about my scheduled visit at the spot on 12.11.2025 at 3:30 p.m. and their signatures were obtained on the same in that regard and copy of the rough Site Plan was also obtained from the counsel of the defendant, Said Notice dated 11.11.2025 and copy of said rough Site Plan are enclosed herewith this report as Annexures LC-1 & LC-2.

On 12.11.2025 at 3:30 p.m. at the time of my visit on the spot, plaintiff- Naresh, defendant- Jasvir and some other persons were present. Among the villagers there were Sajjan Singh and Lokesh and signatures of those persons present there were obtained on the Spot Memo so as to mark their presence at the spot for the purpose of visit of the undersigned. That Spot Memo is also enclosed herewith this report as Annexure LC-3.

I carefully inspected the spot in the presence of above named

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persons, compared it with the copy of rough Site Plan provided by the counsel of the defendant and prepared my separate Rough Site Plan, which is Annexure LC-4 and it was observed that:-

- 1. That street in dispute marked with Letters ABCD starts from the main street situated on its Southern Side and leads towards North Direction and enters into the vacant Plot of Jasvir situated at its Northern end, marked with Letters CFGE, which is surrounded with walls of houses of others and the only entrance of that Plot (CFGE) is through that Street ABCD.*
- 2. Towards the Western Side of that Street ABCD, there was House of Smt. Maya Devi wife of Sh. Ved Parkash marked with Letters HADE and the Windows & Drain Pipe of the House of Smt. Maya Devi wife of Sh. Ved Parkash were fixed towards the said Street.*
- 3. Towards the Eastern Side of said Street ABCD, in the beginning there was House of Defendant No.4- Naveen marked with Letters BIJK and Drain Pipes of House of Naveen were fixed towards the said Street.*
- 4. It is pertinent to mention here that the said Street ABCD was filled with garbage/trash and bushes type Plants as is evident from the Photographs thereof, which are Annexed with this Report as Annexure LC-5 to Annexure LC-B.*
- 5. Towards the Eastern Side of that Street ABCD, after the House of Defendant No.4-Naveen, there was bounded Plot of Plaintiff Naresh marked with Letters KLMN, one Door of which affixed on the Eastern Side of the Street ABCD at Point O, as is evident from the Photograph Annexure LC-9.*
- 6. In the extreme Eastern Side of the said Street there was bounded Plot of Plaintiff-Naresh marked with Letters LFPQRM and one Door of the said Plot was affixed at Point S as is evident from the Photograph Annexure LC-10.*

7. So far as state of affairs of the Street situated towards the Eastern Side of the House of Plaintiff- Naresh is concerned, that has been shown with Letters QRTU and in that Street also, a Big Iron Gate of the bounded Plot of Naresh i.e. of KLMN was affixed at Point V as is evident from the Photographs Annexure LC-11 & Annexure LC-12.

It is pertinent to mention here that besides the above mentioned Photographs, I also recorded the Video of the Spot, which has been stored in a Pen Drive attached with this Report as Annexure LC-13 and requisite CERTIFICATE U/S 63(4) OF THE BHARATIYA SAKSHYA ADHINIYAM (BSA), 2023 is also attached with this Report as Annexure LC-14.

15. After perusal of the report and site plan in the light of photographs and videography, it comes on record that though street in dispute is in existence and shown with the letters ABCD, but it is leading to the plot of defendant No. 1 shown with letters DC in the site plan Annexure LC-4. Hence, the contention of the plaintiff that street ABCD is leading to the northern side of plot of the plaintiff and it upto Point F is misconceived. Consequently, the opening of gate at Point S is neither equitable nor justifiable as even if plaintiff want to use the street in dispute though lying in deplorable condition as evident from the photographs placed on record, he can use it through the portion shown between the letters C and L.

16. The contention of the plaintiff that his property is lying on

the street in western side and there is recital in the sale deeds to that effect, this contention looks attractive but not sustainable as there is nothing to suggest that either the defendant No. 1 or his predecessor were party to the sale deeds in question in which the street is mentioned in western side. Hence, even if there is recital, it cannot be considered as conclusive proof of the fact that in the western side of plot of plaintiff, there is street leading upto Point F shown in the site plan Annexure LC-4. Moreover, the contention of the plaintiff that he has no other street for ingress and egress is also misconceived as in the eastern side, there is already a street shown with the letter TRQU in the site plan Annexure LC-4 leading to main street. This contention is also weakened from the fact that the street in dispute is lying in the deplorable condition and not used by anyone for ingress and egress as clearly and admittedly reflected in the photographs placed on record.

17. Hence, it is proved on record that there is street in the western side of plot of the plaintiff, but to the extent of Point ABCD shown in Annexure LC-4 and not upto Point F and door installed at Point S is neither equitable nor justifiable for any reason. Hence, plaintiff is entitled to the relief of declaration and injunction to the effect that there is street in the western side of plot of the plaintiff, but to the extent of Point ABCD shown in Annexure LC-4 and not upto Point F. Hence, even if the

plaintiff wants to use the street in dispute for ingress and outgress, he is entitled to use it from the portion shown between the letters CL in the site plan Annexure LC-4.

18. Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this Court is of the considered view that plaintiff is entitled to the relief of declaration and permanent injunction to the extent discussed above. Suit of the plaintiff is maintainable. Plaintiff has cause of action and locus standi to file the present suit. Plaintiff is not estopped from filing the present suit. Plaintiff has not concealed the true and material facts from the court. Therefore in view of the above discussion and reasoning, issues no. 1 to 7 are decided in favour of the plaintiff and against the defendants to the extent discussed above.

ISSUE NO. 8 RELIEF.

19. As a sequel to the findings on the aforementioned issues, **the suit of plaintiff stands partly decreed without costs. Plaintiff is entitled for decree of declaration and permanent injunction to the effect that there is street in the western side of plot of the plaintiff, but to the extent of Point ABCD shown in Annexure LC-4 and not upto Point F and door installed at Point S is neither equitable nor justifiable for any reason. Hence, even if the plaintiff wants to use the street in dispute for ingress and outgress,**

he is entitled to use it from the portion shown between the letters CL in the site plan Annexure LC-4 attached with the report of Local Commissioner which is exhibit as DX. Pending application, if any, stands disposed of. Decree-sheet be drawn accordingly and file be consigned to the records after due compliance.

Announced in the open court:
27.07.2026

(Azad Singh)
Civil Judge (Jr.Divn.)
Sonapat.UID No. HR0527

Note: This order contains 14 pages and each page has been checked and signed by me.

Bhavisha Gaba Gr-III,

(Azad Singh)
Civil Judge (Jr.Divn.)
Sonapat.UID No. HR0527

