

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 1483 of 2015

Date of Decision: March 27, 2015

Maya Devi

.....Petitioner

Vs.

Shila Devi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Vaibhav Parashar, Advocate
for the petitioner.

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M.M.S. BEDI, J. (ORAL)

With the assistance of counsel for the defendant- petitioner, I have gone through the photograph annexure P-6 and the site plan produced by the plaintiff- respondent No.1 alongwith the plaint. The plaintiff-respondent No.1 had filed a suit against the defendant- petitioner and respondent No.2 for permanent injunction to restrain the defendants from encroaching upon any part of the land of the common rasta in front of their plots and also sought injunction against the defendant/ petitioner from blocking the said rasta by creating any hurdle in the said common rasta shown as green in the site plan and from further blocking the gate of plot by

the plaintiff marked YZ. The claim of the plaintiff- respondent No.1 in the plaint is that plaintiff- respondent and defendant- petitioner had purchased the suit land jointly as mentioned in para 2 of the plaint and that with mutual agreement, a rasta of 7 ft. width existing earlier on the spot was kept and opening was permitted to the plaintiff at YZ, as shown in the site plan. The trial Court has dismissed the application for interim injunction filed by the plaintiff- respondent refusing to grant the interim injunction as well as mandatory injunction to remove the bricks from the opening YZ on the rasta which is 7 ft. wide in front of defendant's plot but the lower Appellate Court has partly allowed the appeal of the plaintiff- respondent upholding the order of refusal of interim mandatory injunction but the interim restrain order has been passed against the defendant- petitioner to the extent that she will not cause any obstruction and encroachment on the gate of the plaintiff under the boundary wall shown in photograph and site plan dated 29.7.2014.

Counsel for the petitioner submits that the impugned order is self-contradictory and that the defendant- petitioner has been denied a right to use the rasta in front of her plot.

I have considered the contentions of learned counsel for the petitioner and I am of the opinion that the trial Court and the lower Appellate Court have refused to grant mandatory injunction to the plaintiff-respondent for removal of the bricks placed by her on the open YZ but the injunction order which has been passed against the defendant- petitioner is only to deter her to cause obstruction or encroachment on the gate of

plaintiff under the boundary wall, meaning thereby, that the defendant-petitioner cannot enter the constructed portion of the plaintiff- respondent plot but no injunction has been granted against the defendant- petitioner to use the 7ft wide rasta in front of her plot. The defendant- petitioner also claims that the portion which has 7 ft. width in front of her plot is not a common rasta.

I have considered the facts and circumstances of this case and I am of the view that the defendant- petitioner having been permitted to keep the bricks at the place shown in Annexure P-6, it will not be feasible for the plaintiff to use front portion of the plot of the defendant- petitioner as rasta. The ownership and possessory rights of the parties regarding the alleged common rasta in dispute are yet to be determined. No prejudice seems to have been caused to the defendant-petitioner by the impugned order passed by the lower Appellate Court. No ground is made out for interference.

Disposed of with the above observations. However, the trial Court is directed to expeditiously dispose of the suit in accordance with law.

March 27, 2015
sanjay

(M.M.S.BEDI)
JUDGE