

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 2410 of 2015 (O&M)

Date of decision: 8.4.2015

Jasbir Kaur

... Petitioner

VS

Harcharan Dass and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Surjit Singh Swaich, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 21.3.2015 (Annexure P-10) passed by the Civil Judge (Senior Division), S.A.S.Nagar, Mohali, vide which in an execution application filed by the respondents, warrant of simple imprisonment of the petitioner was issued.

Learned counsel for the petitioner submitted that respondent no. 1 filed a suit for permanent injunction restraining the predecessor-in-interest of the petitioner from interfering into the peaceful possession of respondent no. 1 over the plot in dispute. Further prayer was made for restraining the defendants in the suit from raising any construction on eastern side of the plot and for possession of area 5 feet x 45 feet after demolishing the construction raised thereon and in the alternative mandatory injunction was sought requiring defendant no. 2 to close doors, ventilators and parnalas in the wall specified as C and D in the site plan attached. He further submitted that the aforesaid suit was decreed on 15.12.1993 only to the extent that injunction was granted against the defendants from interfering into possession of the plaintiffs in respect of the plot as detailed in the site plan Ex. PW6/B. The rest of the reliefs were declined. The judgment and decree of the trial Court dated 15.12.1993 was upheld upto this Court.

The submission is that the issue under consideration in the present petition is regarding interpretation of the decree. Once mandatory injunction regarding closer of doors, windows and parnalas towards the side of the plot was not granted to the plaintiffs, it was anomalous to treat that the defendants were not entitled to use the area of the plot in dispute. Once the defendants have doors towards the side of the plot in dispute, they had every right to use that excess none other being available. Hence, the order passed by the learned Court below directing civil imprisonment of the petitioner deserves to be set aside.

After hearing learned counsel for the petitioner, I do not find any merit in the present petition.

The relief granted to the plaintiffs in the suit filed is extracted below:-

“14. In view of my findings on the afore mentioned issues, the suit of the plaintiffs for permanent injunction restraining the defendants from interfering in the possession of the plaintiffs in respect of the plot, as per details given in the site plan Ex. PW6/B is decreed but the suit of the plaintiffs for mandatory injunction/ possession is dismissed.”

Despite there being injunction against the predecessor-in-interest of the petitioner restraining them from interfering in possession of the plaintiffs on the plot in dispute, still the same was sought to be used as a passage taking the plea that the petitioner has doors, windows and parnalas of her house towards that side and there was no mandatory injunction granted for closer thereof. The argument is totally misconceived.

Once specifically the court had granted permanent injunction restraining the predecessor-in-interest of the petitioner from interfering in the possession of the plaintiffs on the plot in dispute, even if no mandatory injunction regarding removal or closer of doors, windows or parnalas was granted, still the defendants could not be permitted to use the plot as a passage on the plea that they have right to use the area for access to their house through the door opening in that side.

In view of my aforesaid discussion, I do not find any merit in the present petition. The same is, accordingly, dismissed.

8.4.2015
vs

(Rajesh Bindal)
Judge