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

CR No.2965 of 2015

Date of decision: May 01, 2015

Partap Singh and others

.....Petitioners

Versus

Pawan Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K. Arya, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the orders dated 21.03.2015 and 09.04.2015.

I have heard learned counsel for the petitioners and have gone through the record available on the file carefully.

Respondent has filed suit for permanent injunction restraining the defendants from interfering in his peaceful possession qua his residential house and further it has been prayed that defendants be restrained from causing hindrance or obstruction to plaintiff from raising construction over the wall marked as ABCX in the site plan. Alongwith the suit, an application for temporary injunction was filed. Trial Court vide order dated 21.03.2015, allowed the application and restrained the defendants from interfering in peaceful possession of the plaintiff over the suit property and upon creating any hindrance in the process of construction, if any, undertaken by the plaintiff over the suit property. Appeal filed by the petitioners against the said order was dismissed by the Appellate Court vide order dated 09.04.2015.

The Appellate Court while dismissing the appeal has held as

under:-

5. Although at the time of filing written statement it was averred by the defendants that wall marked AB, as shown red in the site plan attached with the plaint by the plaintiff, is part of their house, which is situated on the southern side of the house of the plaintiff, but later the plaintiff produced affidavit dated 09.05.2013 shown to have been sworn by appellant/defendant Partap Singh compromising the matter with him. As per contents of such affidavit defendant No.1 Partap Singh admitted that the plaintiff is owner in possession of the house shown by words ABCDEFGHIJK and blue in colour in the site plan submitted by the plaintiff with the plaint. It was also admitted that the defendants have no objection if the plaintiff is allowed to raise construction or put lintel over the wall marked ABCX as shown in the site plan appended with the plaint by the plaintiff. Swearing of such affidavit by the defendant has not been challenged or refuted either before the Trial Court or before this Court except simply averring in this Court that there was no compromise. Once it has been specifically pleaded that such affidavit was never executed by the defendant, at this stage, its authenticity and genuineness, prima-facie, cannot be disputed because it has been attested by Notary Public. By swearing such affidavit the defendant has given no objection to the plaintiff to raise construction/lintel over the wall in dispute. The defendants are now estopped by their own act and conduct to challenge such restraint order passed by the learned Civil Judge Pathankot because appellant-defendant no.1 Partap Singh has, in such, affidavit, admitted in so many words that the plaintiff is owner in possession of the house in dispute and further that he has right to raise construction over the wall in dispute. In these circumstances prima-facie case is made out in favour of the plaintiff. If the defendants are allowed to

interfere into the right of the plaintiff to raise construction and to lay lintel on the wall in dispute, which is part of his house, then definitely irreparable loss and injury would be caused to him. Balance of convenience also lies in favour of the plaintiff. In these circumstances such order of the learned Trial Court cannot be said to be perverse or illegal. Therefore it has to be maintained. Finding no merit in this appeal, it is dismissed with costs. However it is made clear that this order shall have no bearing upon the final decision of the suit on merits. Memo of costs be prepared. Trial court file along with copy of this order be sent back. Appeal file be consigned to the record room."

The reasons given by the Appellate Court while dismissing the appeal are sound reasons. It has further been noticed by the Appellate Court that the petitioners have executed an affidavit admitting that the house shown in blue colour in the site plan was owned by the plaintiff. Further, it had been stated by the petitioners that they would have no objection, if the plaintiff raise construction over wall marked ABCX.

In these circumstances, no ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 01, 2015
m.singh