

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.319 of 2015

Date of Decision:-28.01.2015

Dalip Singh.

.....Petitioner.

Versus

Gram Panchayat Abadi Kathialpur & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Sandeep Arora, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

Plaintiff is in revision aggrieved against the order dated 27.11.2014 (P-2) passed by the learned District Judge, Pathankot whereby the learned District Judge has modified the order dated 23.09.2014 (P-1) passed by the learned Civil Judge(Jr. Divn.), Pathankot and granted interim injunction only to the extent that defendants/respondents are restrained from removing the gate of the plaintiff.

Learned Counsel for the petitioner has argued that the learned lower Appellate Court has wrongly modified the order dated 23.09.2014 passed by the learned Civil Judge(Jr. Divn.), Pathankot without appreciating the fact that the plaintiff is the owner of the property and has every right to protect his possession and thus finding returned by the learned lower Appellate Court deserves to be modified and the order passed by the learned trial Court dated 23.09.2014 be restored.

After perusing the paper book, this Court is of the considered view the present petition is devoid of any merit and same deserves to be dismissed.

Perusal of the record reveals that the plaintiff has filed a suit for mandatory injunction directing the defendants to remove windows as shown in the site plan and also for perpetual injunction restraining the defendants from causing any hindrance in the use of gate fixed by him. On being put to notice defendants-Gram Panchayat and other others averred that the plaintiff is wrongly claiming the street to be his own private street and the defendants have not encroached upon the land. Furthermore, by way of counter claim defendant no.3/respondent no.3 has stated that the encroachment upon the public street to be removed as the plaintiff is not the owner of the street in question which he is claiming to his own. It is apparent from the record that the learned lower Appellate Court while deciding the appeal preferred by the respondents had granted stay in their favour qua the fact that the plaintiff will not be entitled to raise any kind of construction over the disputed street/portion till the pendency of the case by relying upon numerous documents placed on record. However, while deciding the application for stay preferred by the present petition, the Court had held that since a gate had been installed by the petitioner and the matter is still to be adjudicated as to whether the disputed portion is a public street or a private street the defendants/respondents were restrained from removing the gate. This Court is of the opinion that since the question that would arise in the main suit can only be decided after evidence is led by both the parties and after appreciating the same, at this stage the learned lower Appellate Court had rightly passed the impugned order which cannot

be stated to be suffering from any kind of perversity which would warrant interference from this Court.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

January 28, 2015
Vinay