

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3573 of 2015

Date of Decision: 25.05.2015

Ganesh Kumar and another

.....Petitioners

Vs.

Harbans Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Yowan Sharma, Advocate,
for the petitioners.

SABINA, J.

Petitioners have filed this petition challenging the order dated 11.05.2015.

Learned counsel for the petitioners has submitted that the suit property bearing Khasra No. 596 was *Rasta Share Aam* and the Gram Panchayat could not change the user of the said passage without following due procedure. Learned counsel for the petitioners has further submitted that the petitioners had been using the suit property as a passage and in case the defendants were allowed to raise construction on the same, petitioners would be left with no passage to reach from their house to the main village street.

Petitioners have filed suit for permanent injunction restraining the defendants from raising any construction and

encroaching over the land bearing Khasra No. 596 (3-1). Along with the suit, petitioners moved an application for temporary injunction. The trial Court, vide order dated 30.08.2014, allowed the said application. The appellate Court in appeal set aside the order, passed by the trial Court and, consequently, application moved by the petitioners under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'CPC'), was dismissed.

A perusal of the site plans i.e. Annexure P-3 (placed on record before the trial Court by the petitioners) and Annexure P-4 (placed on record by the defendants) reveal that the plaintiffs have constructed their houses in Khasra No. 597. Although, in the site plan Annexure P-3, plaintiffs have shown the opening of the gates of their houses in Khasra No. 596 but it is evident from the said site plan that there is also a passage on the southern side of the houses of the plaintiffs. As per Annexure P-4 (site plan placed on record by the defendants), the gates of the houses of the plaintiffs open in the street on the southern side of their houses which ultimately connects them to the main street of the village. In Khasra No. 596, construction has already been raised.

It has been noticed by the appellate Court that the Local Commissioner has also submitted the report and as per the site plan, placed on record by the Local Commissioner, the plaintiffs had another passage for ingress and outgress of their houses. It is the case of the defendants that they have already constructed a Patwarkhana, Nagger Khera, Forest Building, Anganwadi and Cemented street on the site in dispute.

At this stage, the Courts below were only required to see as to whether plaintiffs had a *prima facie* case or balance of convenience in their favour. As per the site plans placed on record, it is evident that the plaintiffs have a passage to reach from their house to the main village street, thus, the plaintiffs have no *prima facie* case or balance of convenience in their favour. As per the revenue record, Khasra No. 596 is owned and possessed by the Gram Panchayat.

In these circumstances, the arguments raised by the learned counsel for the petitioners have no force.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

May 25, 2015
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