

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

**CR No. 5162 of 2014 (O&M).
Date of Decision : 28.05.2015.**

Surinder Gupta alias Surinder Kumar Aggarwal ...Petitioner

Versus

Satish Kumar Gupta @ Billa and others ...Respondents

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

Present: Mr. K.K. Garg, Advocate for the petitioner.

Mr. K.S. Dadwal, Advocate for the respondents.

M.M.S. Bedi, J.

This is plaintiff's revision petition against the order dated 17.07.2014 passed by the learned Additional District Judge, Hoshiarpur allowing the appeal of defendants-respondents against the order dated 03.10.2011 passed by the learned Civil Judge (Jr. Divn.), Hoshiarpur allowing the application under Order 39 Rules 1 and 2 CPC to restrain the defendants-respondents from raising/continuing with construction work in the area of common stairs, joint walls and common roof of their buildings. The plaintiff-petitioner had filed a suit for injunction to restrain the defendants-respondents illegally and forcefully demolishing the common stairs, joint wall and common roof or to cause any damage till the disposal of the suit.

Taking into consideration the material available on record including the site plan, copy of which has also been placed on record as Annexure P-7, the Appellate Court has passed the following order :-

"I have considered the contentions and have gone through the record. The parties to the suit are in exclusive possession of their properties. Being in exclusive possession, the respondent as well as the appellants have

right to enjoy their property. However, neither the appellants nor the respondent have any right to enjoying their property in the way which is detriment to the rights of other party. It is an admitted fact that the appellants are in exclusive possession of their share, which is shown in the site plan filed by the respondent. The respondent alleged the stair case ABCD and walls EF and FG to be common, whereas the same is alleged to be exclusive property by the appellants. Whether this property is common or exclusive ownership of the appellants, the same could only be decided after appreciation of evidence/ to be led by the parties. If for the sake of arguments, it is presumed that the stair case and walls are common/even then the appellants have right to enjoy their property and have right to raise constructions provided that there be no damages to the stair case ABCD and common walls EF and FG and the property of the respondent. The only apprehension of the respondent to file the suit is that there would be damages to the stairs as well as common walls and her property. On the basis of mere apprehension of one party, the other party cannot be restrained/debarred from enjoying his/her own property. If the appellants are ready to give any undertaking as contended by their learned counsel, they can be allowed to raise construction in their portion without causing any damages to the stairs ABCD and walls EF and FG and the property of the respondent. The order status quo passed by the trial Court is, therefore, set aside and the appellants are, therefore, allowed to raise the construction in their portion without causing any alteration in the common stairs and walls EF and FG and without causing any damages to the same. It is further directed that the appellants may continue with their construction work under the supervision of qualified building engineer. They shall seek the opinion of the said building engineer and submit the same before the trial Court before raising any type of construction, so that they may not be any damages to the stairs, walls EF and FG as well as property of the respondent. In case any damages

is done to the stairs, common walls of the property of the respondent, the appellants shall be liable for the same. Thus, appeal is, therefore, disposed of. Copy of order be placed with the record of the lower court and lower court filed be returned. Memo of costs be prepared. Appeal file be consigned to the judicial record room."

Learned counsel for the petitioner-plaintiff has contended that the construction of the house of the petitioner is connected with the property in possession of the defendants-respondents in such a way that any construction or vibration/disturbance in the house of the defendants/respondents would affect the construction of the house of the plaintiff-petitioner. Counsel for the petitioner has relied upon a judgement of Karnataka High Court in ***Vilas Rajaram Jinavekar & another Vs. Smt. Gulabi & Others, 2000(1) CCC 235 (Karnataka)*** in support of his contention that common wall cannot be touched by anybody to the detriment or against the will of the other man. It was observed in the said judgment that if defendant wants to construct a house, he should move for consent of the other man or explain necessity of compulsion of his part to move the Court for proper and necessary directions, but he may not suo motu act on his own whims and fancy and try to interfere with the possession, status and structure of the common wall.

I have considered the circumstances of the case and find that it is not a case of the defendants to raise fresh construction effecting the common wall between the houses of plaintiff and defendants but the defendants want to independently enjoy their property by re-construction, simultaneously safeguarding the property of the plaintiff. Also an undertaking has been given that any loss caused on account of the construction in the house of the defendants would be compensated and that the construction will be undertaken

under the strict supervision of the expert. The Appellate Court while granting permission to the defendant-respondents has taken into consideration the right of the plaintiff-petitioner and taken effective steps to ensure that the rights of the plaintiff are not prejudiced.

In view of the above said circumstances, I do not find any merit in the present revision petition and the same is, accordingly, dismissed.

May 28, 2015.
kanchan

(M.M.S. BEDI)
JUDGE