

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

CR No. 6038 of 2015

Date of Decision: 20.10.2015

Ranjit Singh & others

.....Petitioners

Versus

Amrit Lal Aggarwal & others

.....Respondents

CORAM: HONBLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. C.B.Goel, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1] Plaintiff has filed this revision petition against the judgment dated 10.08.2015 passed by Additional District Judge, Ludhiana, whereby appeal against order dated 28.05.2015 passed by Civil Judge (Junior Division) Ludhiana, has been accepted and application under Order 39 Rule 1 & 2 read with Section 151 CPC for grant of interim injunction has been dismissed.

[2] Plaintiff filed suit for permanent injunction restraining the defendants or their agents from obstructing, abolishing and encroaching two Karam wide private passage "Gair-mumkin pahi" measuring 1 kanal 15

marlas as per jamabandi for the year 2011-12, as shown in the site plan, attached with the plaint. Plaintiffs have alleged that the respondents are developing a colony in the name of Maharaja Aggarsen Enclave on the land adjoining to the land of the petitioners and the construction work is in progress. It has been claimed that the respondents have no right, title over the private passage which belongs to the petitioners and other owners as the respondents are not the owners of the same. But the respondents want to grab the same by demolishing, encroaching and changing the nature of the passage by constructing 45 feet wide road over the said private passage from point A to B as shown in the site plan. The road which has been constructed by the respondents is about 7 feet high from the ground level and that would totally block and obstruct the private passage of the petitioners.

[3] Trial Court vide order dated 28.05.2015 allowed the application thereby restraining the respondents and their employees/agents from changing the nature of "Gair-mumkin pahi"/rasta. Trial Court found all the three ingredients for grant of interim injunction in favour of the plaintiffs. Land of the plaintiffs-petitioners is situated towards Northern side which is 45 feet in width. Land of the petitioners is shown in green colour in site plan as Annexure P-2 whereas, road leading from East to West is shown in

the road level is said to be raised by 7 feet.

[4] According to plaintiffs-petitioners, if this portion A-B is raised by 7 feet in height along with the road shown in blue colour, the same would make the land of the plaintiffs totally in-assessible. Plaintiffs are joint owners in possession of “gair mumkin pahi”. Existence of pahi is admitted as per jamabandi for the year 2010-11. Ownership of the plaintiffs in respect of land is also an admitted fact. If the road is allowed to be raised up to 7 feet at point A-B then there will be total obstruction qua ingress and outgress of the plaintiffs in their land. Defendants have stated that the suit itself is not maintainable and the suit itself is bad for non-joinder of M/S Sharav Infrastructures Private Limited. No injunction can be granted and the only remedy to the plaintiffs is to seek partition.

[5] The Lower Appellate Court has accepted the appeal primarily on the ground that in case of grant of equitable relief, bona fide of the plaintiffs in approaching the Court with clean hands has to be appreciated. The Lower Appellate Court has taken cognizance to the effect that the plaintiffs have not come in Court with clean hands, rather they have tried to conceal material facts for the grant of temporary injunction. Existence of prima facie case, balance of convenience and irreparable loss likely to be caused in the event of non- grant of injunction, are necessary ingredients which are

required to be appreciated by the Court. Sufferance of irreparable loss not capable of compensated is to be appreciated.

[6] The plaintiffs have impleaded some Directors of Private Limited Company who have separate entity than the company. Before the Lower Appellate Court, the plaintiffs admitted that they were not aware of these facts at the time of filing of the suit but perusal of the replication filed by the plaintiffs shows that all these facts have been admited by the plaintiffs. In the notice issued on behalf of the plaintiffs to the Chief Administrator “GALADA” Ludhiana, the plaintiffs have made blanket permission that M/S Sharav Infrastructures Private Limited is developing a colony under the name “Maharaja Aggarsen Enclave” in the land adjoining to the land of the plaintiffs. Therefore, plaintiffs are not proved to have approached the Court with clean hands.

[7] The Lower Appellate Court also took notice of the fact that the plaintiffs alleged ownership to the extent of one fourth share in the property to which “gair-mumkin pahi” (passage) is appertinent thereto. They alleged that the defendants are trying to encroach upon the possession by raising a road and therefore, restraining order has been claimed. The Lower Appellate Court noticed that the defendants are proved and recognised colonisers and are developing “GLADA” i.e approved colony on the property adjoining to the property of the plaintiffs. They have maintained

the road increasing legal requirements of Regulatory Authorities. The alleged common passage is existing without any encroachment, rather the same has been widened without causing any prejudice to the plaintiffs.

[8] The defendants are owners to the extent of 3/4th share of the property appertinent to common passage in question whereas plaintiffs owns only 1/4th share in the said property. Majority of share holdings are satisfied with the cause as against minority shareholders who have come to oppose the cause. The defendants have obtained No Objection Certificate (NOC) from PWD Authorities to lay out these roads and the level of the road. The defendants have pleaded that they want to lay the road at the level of main road i.e. in terms of the norms and therefore, no sufficient grounds exists to injunct the defendant by Court order. Balance of convenience and in the event of grant of any injunction, a big project would come to standstill thereby, no irreparable loss is going to cause to the plaintiff and therefore, on the basis of necessary ingredients, no injunction should have been granted in favour of the plaintiffs.

[9] I have considered the rival submissions of both the sides. Even during the course of hearing, one of the Director filed affidavit to the effect that they shall not raise the level of the road beyond the level of PWD road.

[10] Having considered the issue, as per lay-out plan the only portion

P-2) is the disputed portion. 45 feet wide road is in existence and that has to be at par with PWD road in terms of height. If the portion A-B is made at par with PWD road in height, no prejudice is going to be caused to anyone. All other co-sharers having majority of shares have not objected to set a cause.

[11] In considered opinion of this Court, a smaller portion is not going to propound a case of hardship beyond irreparable loss in favour of the plaintiffs, nor it satisfies the ingredients of prima facie case, balance of convenience and irreparable loss in the event of non-grant of interim injunction. If the cause of the plaintiffs is tested on the threshold of aforesaid requirements, the case is found to be lacking.

[12] In view of aforesaid, this Court is of the considered opinion that no fault has been found with the impugned order passed by the Lower Appellate Court. Consequently, this revision petition is dismissed.

October 20, 2015

vanita

**(RAJ MOHAN SINGH)
JUDGE**