

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 761 of 2010 (O&M)
Date of decision: 25.8.2015

Mahenderpal

.....Petitioner

Versus

Sheela and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Raghav Goel, Advocate for
Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. S.R.Hooda, Advocate
for respondents No. 1 and 2.

Mr. Vishal Yadav, Advocate for
Mr. Ajay Ghangas, Advocate
for respondent No. 3.

SABINA, J.

Petitioner has filed this petition under Section 401 of the Code of Criminal Procedure, 1973 ('*Cr.P.C*' for short) challenging the order dated 31.8.2009.

Learned counsel for the petitioner has submitted that proceedings under Section 133 Cr.P.C. were initiated against the respondents. The Sub Divisional Magistrate had inspected the spot and had found that the respondents had raised construction over the land in question. The land in question was part of the street.

Learned counsel for the respondents, on the other hand, have opposed the petition.

In the present case, petitioner had approached the Sub

Divisional Magistrate under Section 133 Cr.P.C. Vide order dated 23.5.2007, the Sub Divisional Magistrate had allowed the petition filed by the petitioner and directed the respondents to remove the encroachment made by them over the land in dispute marked with letters FIJNO forming part of the public street. The said order was set aside by the Court of Revision vide the impugned order dated 31.8.2009. The learned Additional Sessions Judge while allowing the revision petition has noticed that the wife of the petitioner had filed a civil suit against the respondents for permanent injunction and the same was dismissed by the Trial Court vide judgment and decree dated 20.10.2001. Appeal filed by the wife of the petitioner against the said judgment and decree dated 20.10.2001 passed by the Trial Court, was dismissed. It has further been noticed by the Court of Revision that the petitioner had admitted in his cross-examination qua the pendency of the earlier litigation between the parties. Petitioner had further admitted that he was having ill-will against respondent No. 1 due to previous litigation. He admitted that stairs had been constructed by respondent No. 1 in the year 2001. Faced with this situation, learned Additional Sessions Judge rightly held that it was possible that the proceedings under Section 133 Cr.P.C. had been instituted by the petitioner on account of ill-will between the parties. It has further been noticed by the Court of Revision that there was no definite evidence on record that the construction had been raised in the public street by the respondents. In fact, petitioner had failed to examine any other person from the neighbourhood to corroborate his plea that the respondents by raising construction, had encroached upon the public street. Hence, the learned Additional Sessions had rightly allowed the revision petition filed by respondents No. 1 and 2.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

August 25, 2015

Gurpreet