

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

CR No. 3321 of 2016

Date of decision :10.05.2016

Balvir Singh and another

..... Petitioner

Versus

Ranjit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.L.S.Sidhu, Advocate
for the petitioners.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred by the petitioners-defendants against the order dated 28.09.2015, passed by the learned Additional District Judge, Moga, vide which the appeal filed by the petitioners-defendants against the order dated 10.04.2014 passed by the learned Civil Judge (Junior Division), Moga, has been dismissed.

2. Plaintiffs-respondents no.1 and 2 have filed the suit for permanent injunction restraining the petitioners-

defendants from interfering in the exclusive cultivating possession of the plaintiffs over the land measuring 29 Kanals situated within the revenue estate of village Panj Grain Khurd, Tehsil Bhaghapurana, District Moga detailed and described in the head note of the plaint and demolishing and creating any type of hindrance in the common passage marked ABC shown in red colour in the site plan (Annexure-A), illegally, forcibly and without the due course of law. Along with the suit, the plaintiffs-respondents no.1 and 2 also moved an application under Order 39 Rule 1 and 2 read with Section 151 Code of Civil Procedure, 1908 (for short CPC) for grant of the ad interim injunction.

3. The said application was contested by the petitioners.

4. The learned trial Court vide impugned order dated 10.04.2014 allowed the application filed by the plaintiffs-respondents for grant of ad interim injunction.

5. Aggrieved with the aforesaid order, the petitioners preferred the appeal. The said appeal was also dismissed by the learned Additional District Judge, Moga, vide order dated 28.09.2015. Hence this revision petition.

6. I have heard Mr. L.S.Sidhu, Advocate, learned counsel for the petitioners and have meticulously gone through the paper book.

7. Initiating the arguments, learned counsel for the

petitioners contended that there is no common passage as alleged by the plaintiffs-respondents. The petitioners are owner in exclusive possession of the property comprised of khasra no. 84/9(0-10). He further contended that the impugned orders are primarily based on the report of Local Commissioner, but the petitioners have already moved the objections against the said report and the said report cannot be relied upon. He further contended that the alleged compromise/*bahi* writing is a created document and father of the petitioners was never compensated with any land. Thus, he contended that the existence of the disputed passage is not established and no *prima facie* case was made out in favour of the plaintiffs-respondents no.1 and 2. The learned Courts below have granted the ad interim injunction by ignoring the cardinal principles of the ad interim injunction.

8. I have duly considered the aforesaid contentions.

9. The plaintiffs-respondents no.1 and 2 have filed the suit for grant of a decree for permanent injunction against the petitioners-defendants and performa respondent no.3 for restraining them from interfering in their possession over the land measuring 29 Kanals detailed and described in the head note of the plaint situated in village Panj Grain Khurd, Tehsil Baghapurana, District Moga. They have also sought the injunction restraining the defendants from demolishing, dismantling or creating any type of hindrance in the use of the

common passage marked 'ABC' duly shown in red colour in the site plan annexed with the plaint, which passes through the land bearing khasra no. 73//13/1(0-8), 18/2(0-8), 23/1(0-8), 84//3/1(0-8), 9(-10), illegally forcibly and without due course of law. The plaintiffs-respondents have pleaded that they are using the passage in question to approach their land, but the petitioners-defendants wants to create obstruction/hindrance in the use of this common passage. The claim of the plaintiffs-respondents has been resisted by the petitioners on the ground that no such passage exists. In fact, that is the agriculture land of the petitioners. They have specifically pleaded that no passage runs through killa no. 84/9(0-10).

10. In order to secure the relief of ad interim injunction, the plaintiffs-respondents were required to show the *prima facie* case and balance of convenience in their favour and that they will suffer irreparable loss if the injunction is refused. The learned First Appellate Court has specifically observed on the basis of record that there is no dispute with respect to the existence of the disputed passage between point A to B shown in the site plan dated 08.12.2013 filed by the plaintiffs-respondents. The controversy is only with respect to the existence of the passage from point B to C ending in Khasra no.84/10 (8-0), which belongs to the plaintiffs.

11. The plaintiffs-respondents have produced the

photocopy of the writing showing that a passage of 5 Marla was carved out through the property of Gurcharan Singh, the father of the petitioner/Balbir Singh and he was compensated by giving 2 ½ marlas of land adjoining to the land of plaintiff-Chand Singh. As per the compromise, this passage passes through khasra no. 84/9(8-0). Then, there is the report of the Local Commissioner appointed by the learned trial Court, who has reported about the existence of the passage shown by the plaintiffs in the site plan with the letters B to C. No doubt, objections have been moved by the petitioners against the said report of the Local Commissioner. But, the said objections are to be considered by the learned trial Court at the appropriate stage. In order to determine the *prima facie* case with respect to the existence of the disputed passage there is no reason to ignore the said report of the Local Commissioner.

12. Thus, no fault can be found with the conclusion arrived at by the learned Courts below with respect to *prima facie* existence of the disputed passage. The balance of convenience also seems to be in favour of the plaintiffs-respondents as they are using the passage in dispute to approach their land. If, any obstruction/hindrance is caused in the passage in dispute, certainly, they will suffer the irreparable loss.

13. Resultantly, I do not find any illegality in the discretion exercised by the learned trial Court in granting the

ad interim injunction in favour of the plaintiffs-respondents
no.1 and 2.

14. Consequently, the present revision petition having
no merits, is hereby dismissed.

10.05.2016

S.khan

(DARSHAN SINGH)
JUDGE