

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.4660 of 2016 (O&M)

Date of Decision.22.09.2016

Smt. Radha Rani

.....Petitioner

Vs.

Municipal Council Palwal and others

.....Respondents

Present: Mr. Adarsh Jain, Advocate
for the petitioner.

Mr. Jatinder Nagpal, Advocate and
Mr. D.K. Mittal, DAG, Haryana.
for respondent No.1.

Mr. Ashok Kaushik, Advocate
for respondent Nos.2 to 37.

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AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application moved by respondent Nos.2 to 37 for impleadment in suit for permanent injunction, has been allowed.

Mr. Adarsh Jain, learned counsel for the petitioner submits that the suit aforementioned was filed on the premise that the plaintiff is the owner of the property described in the suit and the Municipal Council started raising construction of the road on the land belonging to the plaintiff. In this background of the matter, the aforementioned suit was filed. The Municipal Council filed the written statement and in para 9 of the same stated that they are reconstructing the road on their own property and not interfering with the ownership and possession of the plaintiff on her property.

On the basis of the pleading, the trial Court had granted the ad interim injunction in favour of the plaintiff. Respondent Nos.2 to 37 moved

the application for impleadment on the ground that they are also seeking easementary right against the plaintiff, much less, against the Municipal Council also. He submits that such a relief cannot be granted as they have to avail independent right for appropriate direction of the Court. He will not have any objection in case respondent Nos.2 to 37 file the suit *viz-a-viz* limitation.

Per contra, Mr. Ashok Kaushik, learned counsel for the respondents submits that pleadings culled out in the plaint are not correct whereas there is *kutcha rasta* and the Municipal Council is reconstructing road on it and injunction granted is not in accordance with law. In any case, the respondents are at liberty to seek appropriate remedy before the Court below in accordance with law by invoking the provisions of Specific Relief Act.

Mr. Jatinder Nagpal, Advocate and Mr. D.K. Mittal, DAG, Haryana appearing for the Municipal Council submits that the Municipal Council is sticking to its own written statement and shall pursue the case diligently. He has drawn attention of this Court to para 3 of the plaint to contend that as per the pleadings, the ownership and possession was of several persons and the same had fallen under the share of joint Hindu family property. It is yet to be proved whether the plaintiff is in exclusive ownership or not.

In rebuttal, Mr. Adarsh Jain, counsel for the petitioner-plaintiff submits that para 3 of the reply is not only vague and evasive but it has been denied subject to strict proof. All the averments in the plaint are yet to be pleaded.

I have heard learned counsel for the parties and appraised the

paper book. The doctrine akin to *dominus litus* is no longer *res integra*.

The relief sought in the plaint, as noticed from the following prayers, is:-

“9. That the plaintiff, therefore, prays to this Hon'ble Court that a decree of permanent injunction restraining the defendant committee from restraining the officers of the defendant council from raising any road in the suit lands or any part of it may kindly be passed in favour of the plaintiff and against the defendant. In the alternative, if the officers of the defendant committee succeed in raising any road in the suit lands or any part of it during the pendency of the suit, then in that case, a decree of mandatory injunction directing the officers of the defendant committee to remove the said road from the suit lands and to render the same in its previous position may also be passed in favour of the plaintiff and against the defendants with costs of the suit.

And/or any other relief, which this Hon'ble Court deems fit and proper may also be awarded in favour of the plaintiff and against the defendant in the larger interest of justice.”

The para 9 of the written statement reads thus:-

“9. Para No.9 of the plaint as stated is wrong and not admitted. It is submitted that the defendant is fully competent to reconstruct the road in the interest of general public. The plaintiff has no right to interfere in the construction work of the defendant who are reconstructing the road on their own property and are not making any interference in the ownership and possession of the plaintiff on her property. Hence the plaintiff has no right to interfere in the reconstruction work of the road by the defendant. The road is being used as a thoroughfare since 1996. The plaintiff has no right, title and authority to cause any interference in the construction work of the defendant on its own property. Hence the plaintiff is not entitled to any relief and the suit be dismissed with costs.”

On perusal of the prayer and the para 9 of the written statement,

it reveals that Municipal Committee has specifically pleaded that they are not interfering in the ownership and possession of the plaintiff on her property. In case, respondent Nos.2 to 37 are aggrieved of having not provided any amenities or easementary rights, they shall be at liberty to file the suit for permanent or mandatory injunction and the objection with regard to limitation shall not be taken in view of the undertaking given by Mr. Adarsh Jain. In case such a suit is filed, the same shall be taken up by the Court which is adjudicating upon the present suit as there is no independent claim against the general public.

For the reasons aforementioned, the impugned order is set aside and the revision petition is allowed on the above terms.

(AMIT RAWAL)
JUDGE

September 22, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No