

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

**CR No.4902 of 2016(O&M)
Date of Decision-24.08.2016**

Ramesh Kumar ... Petitioner
Versus
State of Haryana and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rahul Vats, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 15.07.2015 passed by Civil Judge (Senior Division), Sonapat and order dated 16.05.2016 passed by Additional District Judge, Sonapat whereby prayer in terms of Order 39 Rules 1 and 2 read with Section 151 CPC for grant of ad interim injunction was concurrently declined.

[2]. Plaintiff filed a suit for possession and permanent injunction against the defendants-respondents on the ground that the plaintiff-petitioner was co-sharer in the land measuring 8 bighas, 2 biswas situated in the area of Patti Musalmanan Sonapat. Defendants had constructed a pucca metalled road over some portion of the property about 40 years back without the consent and knowledge of the plaintiff and other co-sharers on an area measuring 388 sft (66' x 56') along with the berms of the property in dispute. A metalled road was constructed by the defendants over the aforesaid land belonging to the plaintiff-petitioner and other co-sharers.

[3]. Plaintiff also alleged that the construction of road was without acquiring the land of plaintiff and other co-sharers and no compensation was paid to them. Plaintiff further alleged that now the plaintiff and other co-sharers came to know that a metalled road over bridge is being constructed and the defendants have started digging foundation for that purpose. Plaintiff-petitioner opposed the construction of any road over bridge over the land in dispute and to handover the vacant possession of the property to the plaintiff-petitioner and other co-sharers or to pay compensation in lieu thereof.

[4]. I have heard learned counsel for the petitioner and considered the material on record.

[5]. Admittedly, construction is in existence for the last 40 years. Plaintiff claimed himself to be co-sharer along with other co-sharers for the land on which such road was constructed 40 years ago. Now construction of road over bridge is the issue which is to the extent of 11.6 meters. The construction of road over bridge is to be done on the land on which constructed road is in existence for the last 40 years. Plaintiff-petitioner did not make any hue and cry when the first time road was constructed over the land about 40 years ago. Now, if road over bridge is being constructed over the same site, the plaintiff is seeking claim of restraint with a relief of possession. For grant of ad interim injunction, golden principle is to assess prima facie nature of case,

balance of convenience and causing of irreparable loss in the event of non grant of temporary injunction.

[6]. Since the metalled road was constructed about 40 years back, now the issue is construction of metalled road over bridge. No new land of the plaintiff-petitioner is being acquired or used or encroached upon by the defendants-respondents. The merits of the claim of the plaintiff in the main suit are not to be weighed at this juncture. Only a prima facie nature of case and nature of injury likely to be caused in the event of non grant of ad interim injunction are to be seen along with balance of convenience in favour of either of the party.

[7]. Concededly, the original road was laid about 40 years back that would not give consideration on merits of the case of plaintiff for the purposes of granting interim injunction to him and in the light of building material and likely causing of damages to the defendants in the event of grant of temporary injunction would be a consideration to be viewed in favour of the defendants. The merits of the case whether the land of the plaintiff or other co-sharers would have been acquired without payment of compensation would be a point for deliberation in the main suit. At this juncture, this Court is not in a position to give any indulgence under Order 39 Rules 1 and 2 CPC in favour of the plaintiff-petitioner keeping in view the welfare activity which is being undertaken on the spot to reduce traffic hazardous.

[8]. In view of aforesaid, this revision petition stands dismissed.

24.08.2016

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(RAJ MOHAN SINGH)
JUDGE