

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

118

Civil Revision No.5917 of 2016
Date of Decision: September 09, 2016

TEHAL SINGH

-PETITIONER

VERSUS

SAUDAGAR KHAN AND ANR

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mohd. Yousaf, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 22.08.2016 passed by Civil Judge (Junior Division), Malerkotla vide which evidence of the plaintiff was closed by order of the Court in a suit for prohibitory injunction seeking to restrain the defendants from carving out any passage in Khasra No.726 owned and possessed by the plaintiff-petitioner. Further restraint was also sought against the defendants not to cause any interference in the possession of the plaintiff.

In the suit proceedings, evidence of the plaintiff-petitioner was closed by way of making statement by the learned counsel on 15.04.2015 and thereafter, evidence of the defendants started w.e.f. 27.04.2015. Defendants also closed their evidence on 26.10.2015 by way of tendering documents. The case was further adjourned to 30.10.2015 for rebuttal, if any, and for arguments.

Plaintiff-petitioner filed an application dated 30.10.2015 to examine Halqa Patwari in order to prove report dated 06.08.2011.

Plaintiff alleged that he had also moved an application before

Tehsildar, Malerkotla for demarcation of the property vis-a-vis existence of pahi (passage), if any. It was alleged that as per report of Patwari, no such pahi (passage) existed in Khasra No.726/2-18 as per revenue record. The aforesaid report was sought to be tendered by the plaintiff-petitioner by way of rebuttal. The said application was contested by the respondents.

The order dated 22.08.2016 has been passed by the Civil Judge (Junior Division), Malerkotla in the following manner:-

“No PW is present. Adjournment is requested. This case is lingering on since 02.12.2014 for evidence of plaintiff, but the plaintiff has failed to conclude his evidence, despite granting numerous opportunities including last one. No plausible explanation has been given by the counsel of the plaintiff for not concluding the evidence as yet. Finding no justification to adjourn the case further evidence of plaintiff, same stands closed by order of court. To come upon 12.09.2016 for DWs.”

Apparently, the aforesaid order does not co-relate with the controversy involved in the present case. This Court is not in a position to comment upon the legality of the claim made by the plaintiff by way of moving application dated 30.10.2015, but the impugned order does not co-relate with the claim advanced by the plaintiff-petitioner vis-a-vis his prayer for leading evidence in rebuttal. At this stage, without meaning anything on the merits of the case, trial Court is required to pass speaking order on the claim of either party without being influenced by any observation made

hereinabove.

In the impugned order, it appears that the trial Court was not alive to the situation that the parties had already concluded their respective evidence and thereafter, the application came to be filed, seeking to get the Halqa Patwari examined. Trial Court would be obligated to see the legality and validity of the claim made by the plaintiff in accordance with law and pass appropriate order on the application. At this stage, keeping in view the nature of order which this Court proposes to pass, there is no requirement of issuing notice to the defendants-respondent.

With the aforesaid observation, this case is remanded back to the trial Court to pass a fresh order on the basis of pleadings of both the parties.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

September 09, 2016

jyoti Y.

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No