

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6106 of 2016 (O&M)

Date of decision: 07.12.2016

Jasvir Singh

....Petitioner

V/S

Sanjeev Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Narinder Sharma, Advocate for the petitioner.

Mr. Jagmeet Singh Moudgill, Advocate for the respondent.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 1.8.2016 passed by the learned Additional District Judge, Patiala (Annexure P-1) and the order dated 17.5.2016 (Annexure P-2) passed by the learned Civil Judge (Junior Division) Rajpura whereby the defendant-petitioner has been restrained from interfering in the use of the common passage/street and also from encroaching upon or blocking/creating any hindrance over the said common passage/street till the decision of the suit.

2. The respondent-plaintiff Sanjeev Singh filed the suit for permanent injunction restraining the defendant-petitioner Jasvir Singh from interfering in the use of the common passage/street and from encroaching upon or blocking or creating any hindrance over the common passage/street shown in Green colour in the site plan attached with the plaint measuring 10 ft. in width x 150 ft. in length shown with letters EFGH situated in the *Lal Dora* of the village Mehdudan, Tehsil

Rajpura, Distt. Patiala.

3. Along with the suit plaintiff-respondent moved an application for grant of ad interim injunction.

4. The said application was contested by the present petitioner/defendant on the ground inter alia that the site plan produced by the plaintiff-respondent is not as per the existing position at the spot. That sometime back the litigation regarding the street has taken place between elders of the defendant and Mansha Singh and Pritam Kaur which ended in a compromise before this Court. In the said compromise, Mansha Singh and others surrendered their right of use and occupation in favour of the elders of the petitioner-defendant and since then they are using the said street EFGH as their personal/individual property. That no door of the house of the plaintiff opens in the street in dispute. The plaintiff-respondent wanted to encroach upon and grab the land of the "Johar" (village pond) abutting the street. He also denied that the plaintiff-respondent is using the said street or that the said street is a public street. With these pleas, the present petitioner has pleaded for dismissal of the injunction application.

5. The learned trial Court vide impugned order dated 17.5.2016 allowed the application moved by the plaintiff-respondent. The defendant-petitioner was restrained from interfering in the use of the common passage and from encroaching upon or blocking or creating any hindrance therein.

6. Aggrieved with the aforesaid order, the defendant-petitioner preferred an appeal. The same has also been dismissed by the learned Additional District Judge, Patiala vide impugned order dated 1.8.2016. Hence, the present revision petition.

7. I have heard Mr.Narinder Sharma, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

Learned counsel for the petitioner contended that the plaintiff-

respondent was not a party to RSA No.1324/1982. The compromise in that regular second appeal has only taken place between the party to the litigation. Only party to that litigation were allowed to use the passage. He contended that in para No.3 of the compromise dated 21.2.1997, it has been categorically mentioned that Net Ram, the grandfather of the petitioner, was given the separate passage shown with letters EFGH. So, the passage in question is separate and exclusive passage of the petitioner-defendant left to his elders. It is not a public passage and the plaintiff-respondent has no right therein. He contended that due to some mistake, the thoroughfare has been mentioned in the compromise. In fact, the compromise was only between Mansha Singh and others and Net Ram. Thus, he contended that the learned Courts below have wrongly granted the injunction.

9. On the other hand, learned counsel for the respondent contended that the compromise dated 21.2.1997 clearly establishes that the passage in dispute was left as the thoroughfare which means it is a public passage and the petitioner has no right to create any hindrance therein or to obstruct the plaintiff from using the same.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that earlier the litigation had taken place between Mansha Singh and others and Net Ram, the grandfather of the present petitioner. The said litigation went up to this Court by way of Regular Second Appeal No.1324 of 1982. It is also not disputed that in the said regular second appeal, the compromise has taken place between the parties and the written compromise dated 21.2.1997 was produced before this Court. In para No.5 of the said compromise, this fact has been categorically mentioned that the passage

shown with letters EFGH will be a thoroughfare. There is no substance in the plea raised by the learned counsel for the petitioner that this passage was only left between the parties to RSA No.1324 of 1982, if that would have been so, the said passage should have been described as common passage of the parties instead of thoroughfare. The petitioner being the legal heir/descendant of Net Ram, party to RSA No.1324 of 1982, is prima facie bound by the terms and conditions of the compromise dated 21.2.1997, so, he cannot contend that the passage in dispute is a private/exclusive passage. The passage in question being thoroughfare as per the compromise dated 21.2.1997, the petitioner-defendant cannot obstruct the use thereof by the plaintiff-respondent nor he can make any encroachment, hindrance or obstruction in the said passage.

12. So, I do not find any illegality or infirmity in the impugned orders passed by the learned Courts below.

13. Consequently, the present revision petition has no merit and the same is hereby dismissed. However, it is made clear that nothing expressed herein shall be construed as an opinion on the merits of the case.

December 07, 2016

ps

(DARSHAN SINGH)

JUDGE

Whether speaking/reasoned

: Yes/No.

Whether reportable

: Yes/No.