

Civil Revision No.130 of 2017 (O&M)

[1]

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

Sr. No. 108

Civil Revision No. 130 of 2017 (O&M)
Date of decision: April 26, 2017

Vijay Kumar

.... Petitioner

Versus

Madhu Bala

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Balraj Singh Rathee, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.8932-CII of 2017

Application is allowed as prayed for.

A copy of Map (Annexure P-11) is taken on record subject to all just exceptions and be tagged at its appropriate place. The filing of certified copy thereof also stands exempted.

CR No.130 of 2017

By virtue of the instant civil revision petition preferred under Article 227 of the Constitution of India, petitioner has sought for

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quashing/setting aside the impugned order dated August 11, 2015 (Annexure P-8) passed by learned Civil Judge (Jr. Divn.), Bahadurgarh whereby an application filed by respondent-plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 CPC has been allowed and further the respondent-plaintiff was permitted to use the common stairs and the petitioner-defendant has been restrained not to create hurdles/obstacles or prevent the respondent-plaintiff from using common stairs as well as the order dated October 13, 2016 (Annexure P-10) passed by learned Additional District Judge, Jhajjar, whereby an appeal preferred against the order dated August 11, 2015 has been dismissed.

2. The contention of the learned counsel for the petitioner is that plot No.3823-P, Sector 9 – 9A at Bahadurgarh, District Jhajjar was allotted to the petitioner-defendant on February 17, 2003 on free hold basis through General Draw of Allotment by Haryana Urban Development Authority (HUDA). The marriage of the respondent-plaintiff was solemnized on February 06, 1999 with Sh. Bhisham Kumar Sharma s/o Sh. Hardwari Lal Sharma, R/o House No.7775, K.P. Quarters, Shakti Nagar, Delhi. But that ran into bad weather and ultimately she was brought by her father. As suggested by the father of the petitioner-defendant, he gifted 1/3 portion of the plot to the respondent-plaintiff, so that she can live peacefully with her children. Even as per the family settlement, separate iron stairs have also been installed/positioned as an approach to the first floor, wherein the respondent-plaintiff has been putting up her residence exclusively without any hindrance, whereas, the permanent stairs already existing are being

exclusively used by the petitioner-defendant. However, subsequently the relations between the parties became restrained and she started creating hurdles/obstacles. Since, as per the settlement, the iron stairs have already been constructed/positioned for the exclusively use by the respondent-plaintiff, the grant of injunction by the trial court as well as dismissal of the appeal by the lower appellate court are absolutely against the natural principles. Rather, under the garb of the impugned order(s) passed by both the courts below, respondent-plaintiff has made the life of the petitioner-defendant a hell. He as well as the family members are not being allowed to use the staircase peacefully.

3. This court has given a thoughtful consideration to the aforesaid submissions made by learned counsel for the petitioner, but find the same to be without any legal or factual weight.

4. Admittedly, the sanctioned site plan does not depict the existence of the iron staircase. Though, there is only one staircase in existence which has been constructed in compliance of the sanctioned site plan. Anything which has been constructed or raised in violation of the building rules by the parties or the allottees, can be removed by the competent authorities (HUDA) at any point of time. The raising of any unauthorized iron staircase, cannot estop or debar the respondent-plaintiff from using the staircase, which has been initially sanctioned and constructed as per the site plan. If, for the sake of arguments, an iron staircase is removed at any subsequent point of time and respondent-plaintiff is declined the injunction which has been sought for her, she would suffer an

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irreparable loss and it would not be possible for her to enjoy the portion of the property in her ownership and possession. Thus, this court does not find any illegality or impropriety in the impugned orders passed by both the courts below. Both the court(s) below have rightly concluded that the prima facie case is made out in favour of the respondent-plaintiff and that the balance of convenience is also lies in her favour. It is the respondent-plaintiff who is likely to suffer an irreparable loss, in case, the injunction sought by her is declined.

5. Thus, finding no merit in the instant petition, it stands dismissed.

April 26, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No