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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2862 of 2016

Date of Decision : 28.09.2017

MUNICIPAL CORPORATION, MOGA

....PETITIONER

VERSUS

PRASANNA KUMARI AND ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjeev Soni, Advocate for the petitioner.
Mr. Manav Satija, Advocate for the respondents.

RAMESHWAR SINGH MALIK, JUDGE (ORAL)

The present civil revision petition under Article 227 of the Constitution of India, is directed against the order dated 15.12.2015 (Annexure P-4), whereby miscellaneous appeal of the plaintiffs-respondents was allowed, setting aside the order dated 21.05.2014, passed by the learned trial Court, whereby application moved by the plaintiffs-respondents under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, along with their suit for permanent injunction was dismissed, declining *ad interim* injunction to the plaintiffs-respondents.

Notice of motion was issued.

Heard learned counsel for the parties.

Undisputedly, it is a suit for permanent injunction which has been filed by the plaintiffs-respondents, wherein evidence of the plaintiffs is going on. Plaintiffs also filed an application under Order XXXIX

Rules 1 and 2 CPC alongwith the suit for permanent injunction but the

said application was dismissed by the learned trial Court vide its order dated 21.05.2014 (Annexure P-2). Plaintiffs-respondents felt aggrieved and filed their miscellaneous appeal which came to be allowed by the learned Additional District Judge vide order dated 15.12.2015 and it is this order, which has been challenged by the defendant-Municipal Corporation, by way of instant civil revision petition.

After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that the learned Additional District Judge was well within his jurisdiction to pass the impugned order dated 15.12.2015, allowing the miscellaneous appeal of the plaintiffs and granting them the *ad interim* injunction, during the pendency of the suit for permanent injunction. It is so said because the plaintiffs-respondents have fulfilled all the three basic ingredients for granting *ad interim* injunction. Since the learned trial Court could not appreciate the factual as well as legal aspect of the matter, while passing its order dated 21.05.2014 (Annexure P-2), the learned Additional District Judge was well justified in allowing the miscellaneous appeal of the plaintiffs while passing the impugned order, which deserves to be upheld.

In fact, ownership of the plaintiffs is not in dispute. Thus, the street in question was being used by all the residents of the area including the plaintiffs. From the observations made by the learned Additional District Judge in para 12 of the impugned order, no doubt of any kind, whatsoever, is left that the plaintiffs have fulfilled all the three basic ingredients for granting *ad interim* injunction in their favour. In view of

the facts pleaded by the plaintiffs in their plaint, they had made out a *prima facie* case in their favour. Balance of convenience was also rightly found in favour of the plaintiffs by the learned Additional District Judge. Further in case *ad interim* injunction would not have been granted in favour of the plaintiffs by the learned Additional District Judge, an irreparable loss would have been caused to them thereby defeating the very purpose of filing suit for permanent injunction. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Additional District Judge committed no error of law, while passing the impugned order and the same deserves to be upheld for this reason also.

As far as the judgment of this Court in '**Gita Devi versus Municipal Council, Jind,**' 2009(1) RCR (Civil) 292, relied upon by learned counsel for the petitioner, is concerned, there is no dispute of about the observation made therein. However, the allegation of the petitioner that the plaintiffs have encroached upon the common public street cannot be accepted at this stage because this aspect of the matter is yet to be examined, considered and appreciated by the learned trial Court after going through the relevant evidence which is yet to be brought on record by both the parties. Thus, the plea raised on behalf of the petitioner in this regard has been found to be based on presumptions only and the same is wholly misplaced.

Since, the judgment of this Court in **Gita Devi's** case (supra) was based on entirely different sets of facts, it is of no help to the petitioner. It is the settled principle of law that peculiar facts of each case

are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, **as held by the Hon'ble Supreme Court in Padmausundara Rao and another versus State of Tamil Nadu and others, 2002(3) SCC 533, Union of India versus Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa versus Md. Illiyas, 2006(1) SCC 275 and State of Rajasthan versus Ganeshi Lal, 2008(2) SCC 533.**

Coming to the fact situation obtaining on record of the present case and keeping in view the observations made in the forgoing paragraphs, no fault can be found with the impugned order, passed by the learned Additional District Judge because the same has been found based on sound reasons and it deserves to be upheld.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

However, before parting with the order and on request made by learned counsel for the parties, learned trial Court is directed to expedite the decide the civil suit as expeditiously as possible.

(RAMESHWAR SINGH MALIK)
JUDGE

September 28, 2017
rajneesh

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No