

Civil Revision No.3525 of 2016 (O&M)

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

Sr. No.107

**Civil Revision No.3525 of 2016 (O&M)
DECIDED ON: March 15, 2017**

ALI MOHAMMAD

..PETITIONER

VERSUS

GRAM PANCHAYAT VILLAGE MEHMOOBPURA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Preetwinder Singh Dhaliwal, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.429-CII of 2017

Application is allowed as prayed for.

Documents (Annexure P-6 & P-7) are taken on record subject
to all just exceptions and be tagged at appropriate place.

CR No.3525 of 2016

Aggrieved against the order dated February 23, 2016
(Annexure P-5) passed by learned Additional District Judge, Sangrur vide
which an appeal preferred by the petitioner against the order dated May 19,
2014 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.) Malerkotla,
whereby an application under Order XXXIX Rule 1 & 2 read with Section

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151 CPC was dismissed, petitioner-Ali Mohammad has preferred the instant revision petition.

2. The brief facts of the case leading to the filing of instant petition are that there is passage/pahi comprised in Khewat No.135/132, Khautoni No.336 bearing Khasra No.200 min (0-4) as per jamabandi for the year 2007-08 owned by the Gram Panchayat which leads to the land of petitioner and is being used, as such, by him since immemorial. It is alleged that due to some political differences with the petitioner who is ex-Sarpanch of village, respondent No.2 intends to raise construction over the passage/pahi illegally and wrongly just to settle his personal score. Even the respondent in connivance with the revenue authorities vide rapat No.281 dated June 11, 2010 got changed the nature of said passage and converted it into the plot in the revenue record illegally, wrongly and tried to start constructions over the same. The said auction of the Gram Panchayat as well as respondent No.2 has been challenged by the petitioner by filing a suit for declaration to the effect that rapat No.281 dated June 11, 2010 is illegal, inoperative, unenforceable and result of connivance with the revenue authorities and for permanent injunction restraining the respondents from raising any sort of construction upon the disputed property i.e. passage. Along with said suit an application under Order XXXIX Rule 1 & 2 read with Section 151 CPC seeking ad interim injunction restraining the respondents/defendants from blocking the passage during the pendency of the suit was also filed but that was dismissed vide order dated May 19, 2014 passed by Civil Judge (Jr. Divn.) Malerkotla. An appeal preferred against the aforesaid order dated May 19, 2014 was also dismissed by the learned

Additional District Judge, Sangrur vide order dated February 23, 2016 which necessitated the filing of the instant revision petition.

3. Assailing the impugned orders passed by both the courts below, it has been argued with vehemence by the learned counsel for the petitioner that the same are absolutely against the evidence as well as settled canons of law governing the grant of injunction. The courts below have ignored the documents on record which clearly depict the property in suit to be a passage/pahi. Since, the disputed property is being used as a passage by the petitioner as well as the other persons for as an approach to their fields, in case the respondents succeeded in their illegal design to encroach upon the passage as well as to raise construction thereon, he is likely to suffer an irreparable loss and injury which cannot be compensated in terms of money. There is no other passage which can be used as an excess or approach to his fields by the petitioner. Similarly, the courts below have also failed to appreciate that the nature of the passage/pahi as recorded in the revenue record has been illegally and wrongly changed by the revenue authorities vide rapat No.281 dated June 11, 2010. Despite the fact that they were not competent and authorize to make any amendment in the entries appearing in the jamabandi. In fact, the correction of jamabandi entries can only be made by the civil courts by filing a regular suit under Section 45 of the Punjab Land Revenue Act, 1887.

4. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but find the same to be without any legal and factual weight.

5. Before proceeding to decide the matter in controversy on

merits, it would be desirable to highlight the extent and scope of jurisdiction of the lower appellate court or the revisional court to interfere with the order passed by the trial court in exercise of its discretion under Order XXXIX Rules 1 & 2 CPC. The extent and scope of jurisdiction was discussed at length by the Rajasthan High Court in Vimla Devi Vs. Jang Bahadur, AIR 1977 Rajasthan 196 wherein the legal proposition was summed up in the following words:-

“The order refusing temporary injunction of a discretionary character - Ordinarily Court of appeal will not interfere with the exercise of discretion by the trial Court and substitute for it its own discretion. The interference with the discretionary order, however, may be justified if the lower Court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records. The mere possibility of the Appellate Court coming to a different conclusion on the same facts and evidence will also not justify interference.”

6. Similar has been expressed by this Court in Krishan Kumar v. The State of Haryana and another, 1992(1) RRR 433 (P&H) : 1992(1) Revenue Law Reporter 207, wherein this Court has observed as under:-

“A perusal of the Appellate Court’s order shows that it has not assigned any cogent reason to set aside the discretion exercised by the trial Court. The lower Appellate Court has not demonstrated as to how on admitted facts principles of law have been wrongly applied. I am, therefore, of the opinion that the lower Appellate Court was not justified in setting aside the order and interfering in the discretion exercised by the

trial Court.”

7. Both the above referred judgments were further relied upon by this Court while rendering pronouncement in case *Guru Nanak Education Trust v. Balbir Singh*, 1995 AIR (Punjab) 290 : 1995(3) R.R.R. 721.

8. Now, in the light of the aforesaid limited jurisdiction, it is to be seen whether the impugned order and judgment being arbitrary, perverse, capricious or in disregard of sound legal principles or without considering all the relevant records, deserve any interference by this Court?

9. Similarly, in another case “*Bant Singh Vs. Labh Singh reported in Vol. CLS VI (2012-2) The Punjab Law Reporter Page 228*”, it has been held that the appellate court and revisional court can interfere in the discretion exercised by the trial court(s) to very limited extent when order suffers from clear violation of law or findings are perverse. Now, in the light of aforesaid limited scope and jurisdiction, it is to be seen whether the impugned orders passed by both the courts below deserve to be interfered with by this court?

10. A glance at the Aks Latha and Musavi depict the property in question as plot as has been reflected in the impugned order dated February 23, 2016. So far as the Field Book is concerned, the property in question has been shown as Nanyani Chahi.

11. Here it would also be pertinent to mention that previously one Sohna Singh filed a civil suit in respect of disputed property and sought injunction which was declined by the courts below. A revision petition preferred before this court was also dismissed vide order dated March 22, 2013. It was only thereafter, the petitioner filed a suit for declaration and

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permanent injunction along with an application under Order XXXIX Rule 1 & 2 read with Section 151 CPC which was dismissed by both the courts below. The necessary correction has already been made in the revenue record after a visit at the spot vide rapat No.281 and the property in question was found to be a plot which vest in the Gram Panchayat. Moreover, a grant has been given by the Government for raising the construction of Dharamshala, which is in progress at the spot. In fact, it appears that by way of filing the suit and seeking injunction, the petitioner intends to obstruct the construction of Dharamshala which is in progress at the spot and the suit as well as application for injunction appears to have been filed by the petitioner at the instance of Sohna Singh who is in his close relation. This court is of the considered view that both the courts below have exercised the discretion while deciding the injunction application as well as appeal in a very judicious manner. As such, the impugned orders did not call for any interference by this court especially when the same are absolutely in consonance with the evidence and settled principles of law governing the grant/decline of injunction.

12. In the light of what has been discussed above, this court does not find any merit in the instant revision petition, the same is dismissed, whereby impugned orders passed by both the courts below are upheld.

13. No order as to costs.

March 15, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**