

CM-13484-85-CII-2017 in/and
CR-3694-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-13484-85-CII-2017 in/and
CR-3694-2017 (O&M)

Date of decision: 03.07.2017

Shamsher Singh

..... Petitioner

Versus

Moti Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. SS Siao, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

CM-13484-CII-2017

Allowed as prayed for.

CM-13485-CII-2017

Annexures P-5 to P-7 filed along with the application are taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.

CM stands disposed of.

CR-3694-2017 (O&M)

1. Challenge in the instant Civil Revision under Article 227 of the Constitution of India, has been laid to the impugned order dated 02.12.2016 (Annexure P-4) passed by the Ist Appellate Court, affirming the order dated 24.04.2015 (Annexure P-2) passed by the trial Court, in Civil Suit No. 507 of 2014, titled as Moti Ram and another Vs. Shamsher Singh and others, restraining the petitioner along with his co-defendants from tethering any cattle in the disputed street depicted in the site plan with letter "B" annexed

with the plaint as Annexure "A". Status quo was also ordered to be

maintained qua the public park shown with letter “A” in the above site plan.

2. Briefly stated, respondents No. 1 and 2 filed a suit for permanent injunction along with an application under Order 39 Rules 1 and 2 CPC, restraining the petitioner and his co-defendants (respondents No. 3 to 10 herein) from encroaching upon the public park and causing any nuisance by tethering cattle, throwing dung etc. or/in any manner in the public street. Vide order dated 24.04.2015 (Annexure P-2), the trial Court by accepting the application under Order 39 Rules 1 and 2 read with Section 151 CPC, restrained the petitioner and his co-defendants in the manner as mentioned above in the opening part of the judgment.

3. Being aggrieved, the petitioner, filed an appeal before the learned Additional District Judge, Fatehgarh Sahib which too was dismissed vide the impugned order dated 02.12.2016 (Annexure P-4).

4. I have given anxious consideration to the submissions made by learned counsel for the petitioner.

5. There are concurrent findings of both the Courts below restraining the petitioner and his co-defendants tethering any cattle in the street and to maintain status quo qua the public park.

6. No fruitful arguments have been raised by learned counsel for the petitioner except that the property in dispute was in physical and continuous possession of the petitioner and his brother and that the Municipal Council, after conducting survey of the area had allotted property unit No. B006/00342 to the property in dispute vide register entry (Annexure P-5). Further, that the petitioner had also deposited a sum of ₹ 73/- as property tax in respect of the property in dispute vide receipt dated

7. Both the above documents are admittedly not the documents of title in favour of the petitioner and, thus, did not give any permit to the petitioner to claim his ownership over the disputed public street and park. Even no legal sanctity is attached to these documents. The petitioner has to prove his title over the property in dispute by leading cogent and convincing evidence. I have gone through the impugned order and find no illegality or perversity in it.

8. In view of the discussion made above, the instant revision being devoid of any merit is hereby dismissed. However, it is clarified that anything observed here-in-above shall not be taken as an expression of opinion on the merits of the controversy while deciding the main case.

July 03, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No