

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

**CR No.433 of 2017 (O&M).
Date of Decision: 23.01.2017.**

Bodh RajPetitioner.

VERSUS

Tulsi Dass and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jatin Hans, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-1109-CII-2017

Allowed, as prayed for.

CR-433-2017

By way of this revision petition, judgment dated 14.10.2016 passed by learned Additional District Judge, Bhiwani dismissing the appeal filed by petitioner-plaintiff Bodh Raj and the order dated 04.10.2016 passed by learned Additional Civil Judge (Senior Division), Siwani by virtue of which the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code (for short, "the CPC") filed by the petitioner-plaintiff seeking ad interim injunction was dismissed, have been assailed.

The petitioner-plaintiff filed a suit for permanent injunction seeking an injunctive order against the respondents-defendants on the ground that he is owner of the property measuring 150 square yards

approximately on which a shop stands constructed since the time of his ancestors. The shop of his brother (defendant-respondent No.1) adjoins his shop and his brother in collusion with Secretary, Municipal Committee (defendant No.2) is bent upon to demolish his shop and dispossess him illegally and forcibly. Alongwith the suit he filed an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC for ad-interim injunction.

In the written statement, defendant-respondent No.2 Municipal Committee pleaded that it is owner in possession of land comprised in Khewat No.1965/1896, Khatoni No.2585, Khasra No.1078(16-19) to the extent of 203/204 share. The Custodian Department owned and possessed the land comprised in Khasra No.673/1 out of which Ghosa-D - 10 Karam x 8 Karam and 57 karam x 71 karams was being used as passage which merged with the passage comprised in Khasra No.1078(16-19). The said passage leads from Railway Station to Siwani town and is in existence since the inception of the village. The plaintiff and his brother (defendant No.1) had illegally encroached upon some portion of Ghosa D-10 of Khasra No.673/1 that was adjoining to their property comprised in Khasra No.694 and had raised construction on the same. The Municipal Committee was to construct the entire passage afresh but the plaintiff and defendant No.1 were raising obstruction in the same.

The application filed by the petitioner-plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC praying to restrain defendant No.2 from interfering in their possession was dismissed by learned trial Court vide order dated 04.10.2016 and the appeal filed by the petitioner-plaintiff was also dismissed by learned Additional District Judge,

Feeling aggrieved, the petitioner-plaintiff preferred the instant revision petition.

The submissions made by Mr. Jatin Hans, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that there is no denial by the defendant-committee that the petitioner is owner in possession of land measuring 17 Marlas comprised in Khasra No.694. The petitioner has constructed his shop on the land owned by him. A local commission was appointed by learned trial Court and as per his report the passage in question is situated 41 feet away from the shop of the plaintiff. In view of said facts and circumstances, the petitioner has a prima facie case and is entitled to an ad interim injunction against the defendants-respondents.

On perusal of the judgment dated 14.10.2016 passed by learned Additional District Judge, it transpires that during arguments before the said Court the respondent-Municipal Committee, Siwani had produced a letter stating that the construction of the road had been completed after removing the encroachment made by the plaintiff and other persons. Some photographs were also produced showing demolition of the illegal construction made by the plaintiff and some other shopkeepers encroaching upon the land of the passage. In addition to the same, it was noticed from the record produced by the respondent-Municipal Committee that the father of the plaintiff had purchased property having dimensions 17' x 17' and 47' x 47'. However, till date no document had been produced by the petitioner to prove that the construction of his shop was in existence since the time of his forefathers or that the construction was raised only on the land purchased by his father or that the Municipal Committee was interfering in

the construction raised on the area of which he was legally owner by way of purchase by his father.

Accordingly, there being no illegality or perversity in the order dated 04.10.2016 and judgment dated 14.10.2016 calling for intervention, the instant petition is dismissed.

(SNEH PRASHAR)
JUDGE

23.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **No**