

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

***Civil Revision No. 5663 of 2015
Decided on: April 06, 2017***

RAJ KUMAR

.....PETITIONER

VERSUS

BIMLA RANI AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. APS Sandhu, Advocate
for the petitioner.

Mr. Premjit Kalia, Advocate
for the respondents.

JASPAL SINGH, J (ORAL)

Challenge in this revision petition is to the order dated September 09, 2014 (Annexure P-7) passed by learned Civil Judge (Jr. Division), Ajnala whereby, an application filed by respondents, under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC') has been allowed as well as to the order dated April 24, 2015 (Annexure P-8) passed by learned Additional District Judge, Amritsar, whereby, an appeal filed by the petitioner against the afore-said order has been dismissed.

The facts giving rise to the instant revision petition are that the respondents/plaintiffs has filed the suit for permanent injunction restraining the petitioner from raising any type of construction in the street shown as red in the site plan attached with the plaint, with the allegations that petitioner intends to block as well as change the nature of the street. The another relief sought by the

respondents/plaintiffs is that petitioner/defendant be also restrained from raising any type of construction in this street. Alongwith the plaint, an application under Order XXXIX Rule 1 and 2 of the Code was also filed, which was disposed of vide impugned order dated September 09, 2014 whereby, parties were directed to maintain status quo with regard to the situation at the spot.

Aggrieved against the said order of status quo, petitioner preferred an appeal, which was dismissed without considering the entire aspects, that too, without appreciation of documents available on record, by learned Additional District Judge, Amritsar vide order dated April 24, 2015.

The contention of learned counsel for the petitioner is that the learned trial Court has misunderstood the contents of the letter dated August 14, 2014 (Annexure P-6). It is just a notice served upon the petitioner under Section 195(d) of Punjab Municipal Act, 1911 (for short 'Act'). The said notice was issued on the ground that the construction is not being raised according to the site plan. There was not even a slightest reference in the said notice about the street existing in front of the houses of the parties to the instant petition. The petitioner was further directed through the afore-said notice to get the afore-said construction regularized from the office but both the courts below have directed the parties to maintain status quo just by placing the entire claim in above-referred notice. The said notice does not in any way supports the case of respondents/plaintiffs or that the petitioner/defendant is encroaching upon the part of the street. He further contends that 90% of the construction has already been raised by the petitioner/defendant and only plaster of the building remains. Respondents/plaintiffs have also not approached the court with clean hands.

Even, they have encroached upon the area of the street by raising projection

from one end to the another end of the street on the first floor, which is apparent from the various photographs available on the record. Petitioner is suffering for his no fault for the last about 3 years. Moreover, while concluding his arguments learned counsel for the petitioner contends that he undertakes not to encroach upon any part of the street and he only intends to complete his building i.e. to do plaster etc.

On the other hand learned counsel for the respondents/plaintiffs has submitted that both the courts below have rightly exercised the discretion. No order which causes any prejudice or injury to the petitioner, has been passed by either of the courts below. Only the parties have been directed to maintain status quo qua existing position at the spot. Since the petitioner has encroached upon the part of the street, he has rightly been directed to maintain status quo with regard to the street at the spot, respondents/plaintiffs, accordingly, prayed for the dismissal of the instant revision petition.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the various documents available on file, this Court is of the considered view that the direction given to the parties to maintain status quo on the existing situation/position at the spot as well as dismissal of appeal are beyond the documents available on file.

It is cardinal principle of law that a person who seeks equity must do equity but in the case in hand there is a clear cut violation of said principle. The petitioner has almost raised the construction which can be said to the extent of 90% in which he is running a shop. In fact the respondents/plaintiffs have also their Beauty Parlour, which is clear from the photographs and if that photographs are thoroughly scrutinised, there is projection on the major part of

the street. In fact, respondents/plaintiffs are themselves encroachers of the street. They cannot seek any sort of injunction against the other persons. Moreover, the construction has been raised by the petitioner after getting the site plan sanctioned. No doubt, the street in question abuts the house of the respondents/plaintiffs and they are using the same. The notice has been issued by the Municipal Council under Section 195(d) of the Act for the regularization of the site plan. There is not even a slightest reference with regard to the street in question in the said notice. Rather, the courts below have taken a view, from the notice issued by the Nagar Panchayat, Ajnala under the Act and initiation of the proceedings that he is encroaching upon the street, which supports the version of the respondents/plaintiffs. In fact, both the courts below have misconstrued the contents of the said notice.

So, in the facts and circumstances as well as discussion narrated above, this Court is of the considered view that neither any *prima-facie* case is made out in favour of the respondents/plaintiffs nor balance of convenience lies in their favour. Nor they are suffering any irreparable loss, which cannot be compensated in terms of money. Rather, all the three ingredients lean in favour of the petitioner/defendant. With the grant of direction to the parties to maintain status quo by learned trial Court and upheld by the first Appellate Court through the impugned orders, petitioner is sufferer who has already completed almost the construction as per the site plan approved by the Municipal Council.

Thus, this Court is of the considered view that both the courts below have committed a patent illegality while allowing the application under Order XXXIX Rule 1 and 2 of the Code as well as dismissing the appeal. Hence, the

instant revision petition is allowed and impugned orders passed by both the courts below are set aside. Consequently, an application under Order XXXIX Rule 1 and 2 of the Code moved by respondents/plaintiffs is hereby, dismissed.

APRIL 06, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>