

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

**Civil Revision No.6278 of 2016 (O&M)
Date of Decision: 11.10.2017**

Richa Bansal and another

.....Petitioners

Vs

Ram Dhari and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. G.C. Shahpuri, Advocate
for the petitioners.

Mr. Ishwar Pal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 23.08.2016 passed by the Addl. District Judge, Jagadhri vide which appeal filed by respondent No.1 was partly allowed and the order passed by the trial Court was set aside reversing/modifying the findings recorded by the trial Court.

[2]. Brief facts are that respondent No.1/Ramdhari filed a suit for permanent injunction restraining the defendants/petitioners and proforma respondents from encroaching upon the courtyard marked with letters 'ABDC' shown in read colour

by putting cemented lintel, iron net or fiber sheet and from changing its existing structure by raising any construction. Further the defendants were sought to be restrained from encroaching upon the common courtyard marked by letters 'CIRQPON' shown in yellow colour by putting cemented lintel, iron net or fiber sheet or by changing its nature. Defendants were also sought to be restrained from demolishing the common wall marked with letters 'CG' shown in green colour and from raising any construction at point 'D' to 'C' by raising any wall or affixing any door therein.

[3]. Further restraint order was sought in respect of demolishing the common water drain/Nali started from point 'D' to main street towards southern side marked by letters 'DCNM' and from changing its existing nature and course and blocking the same in any manner. Besides this, mandatory injunction was also sought directing the defendants to remove the wall from point 'E' to 'F' as shown in the site plan in red colour from the common courtyard open to sky i.e. the portion marked by letters 'ABDC' on which the defendants had raised illegal and unlawfully. Further directions were sought that the defendants be directed to construct a wall 6 inch in width up to the roof level at point 'K' to 'J' shown in red colour in the site plan which is part of common wall from point 'L' to 'D' which the defendants had

demolished intentionally and forcibly and by doing so the strength of wall from point 'L' to 'D' has become weak.

[4]. Learned counsel for the petitioners contended that portion 'BDCA' as shown in red colour in the site plan (Annexure P-2) was exclusively owned and possessed by the petitioners on the basis of sale deed dated 13.02.2013. The petitioners have purchased the same from Naveen Kumar son of Jai Parkash.

[5]. Learned counsel further submitted that the portion 'DHIC' as shown in blue colour is a common chowk which is being used by the defendants/petitioners for ingress and egress to their house situated towards southern side of the property shown in red colour. The ground floor of the aforesaid property D&C is vacant whereas first floor has been constructed by respondent No.1. The portion 'CIRQPON' is also a common courtyard shown in yellow colour in the site plan which is being used by both the parties. Vide the impugned order, the petitioners have been restrained from constructing wall 'DC' using the portion 'DHIC' and creating obstruction at 'CG' i.e. in between the portion shown in red color and the property of Jai Parkash.

[6]. Learned counsel further submitted that portion 'DCNM'

is drain. In order to ward off dust and filth towards their property i.e. shown in red colour in the site plan, the petitioners wanted to erect a wall with a door in order to have access to the portion 'DHIC' as well as to 'CIRQPON' which in any case would not prejudice the rights of the plaintiff/respondent No.1 in any manner because the plaintiff has himself erected pillars adjoining the portion 'DC' and has constructed his first floor over the portion shown in blue colour i.e. 'DHIC'.

[7]. Learned counsel for respondent No.1 vehemently submitted that the vendor of the petitioner was having no title, therefore, he would not pass better title than the one held by him.

[8]. Having heard the submissions made by learned counsel for the parties, factum of purchase of portion 'BDCA' by the petitioners from Naveen Kumar would be the subject matter of validity of sale deed dated 13.02.2013 executed by Naveen Kumar in favour of the petitioners.

[9]. At this stage of litigation, the aforesaid issue cannot be decided as the same would be decided by the trial Court after appreciation of the evidence on record in due course. Since the title of the property as shown in red colour in the site plan would be decided by the trial Court in due course, at this stage, the

plaintiff cannot be permitted to seek restraint against the use of property as shown in red colour and to have ingress and egress at point 'CG' towards the portion of the property belonging to Jai Parkash. However such a course would be subject to final decision of the suit. At this stage it would be just and expedient to direct the parties to maintain status quo and the trial Court is directed to make every endeavour to decide the case by giving short adjournments as early as possible.

[10]. With the aforesaid observations the present revision petitions is disposed of. Nothing expressed in this revision petition would be having any bearing on the merits of the case which is to be decided by the trial Court in accordance with law.

October 11, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No