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

**C.R. No.7479 of 2017(O&M)
Date of Decision : 01.11.2017**

HARJIT KAUR

...PETITIONER

VERSUS

VED PARKASH KASANIA AND OTHERS

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr.Abhimanyu Sharma, Advocate
for the petitioner.

B.S.WALIA, JUDGE (ORAL)

[1]. Challenge is to order dated 08.07.2016-Annexure P-1 passed by the learned Civil Judge (Jr. Div.), Sirsa, as well as judgment dated 09.10.2017-Annexure P-2 passed by the learned Additional District Judge, Sirsa whereby the application under Order 39 Rule 1 & 2 of the CPC read with Section 151 of CPC was dismissed. Prayer is for allowing the application under Order 39 Rule 1 and 2 of the CPC.

[2]. Brief facts of the case leading to the filing of the instant petition are that the petitioner plaintiff filed a suit for permanent injunction along with an application under Order 39 Rule 1 and 2 of the CPC for restraining the respondent-defendants from interfering in any manner in the peaceful possession of the petitioner plaintiff over 02 Marla of land entered in her name vide registered sale deed dated 03.07.2009.

[3]. The application under Order 39 Rule 1 and 2 of the CPC was dismissed vide order dated 08.07.2016 (Annexure P-1) by the learned Civil Judge (Jr. Div.), Sirsa on the ground that the details of the property as per

sale deed in favour of the petitioner-plaintiff were different from the details of the property as mentioned in the head note of the plaint. Accordingly, holding that the petitioner-plaintiff had failed to make out a prima-facie case in her favour, the application for grant of interim injunction under Order 39 Rule 1 and 2 of the CPC was dismissed.

[4]. The matter was carried in appeal by the petitioner-plaintiff before the learned Additional District Judge, Sirsa, who vide order dated 09.10.2017 (Annexure P-2) dismissed the appeal by reiterating the grounds on which the application had been dismissed by the learned trial Court.

[5]. Learned counsel for the petitioner states that the difference in the description of the property as per details given in the sale deed and details as mentioned in the head note of the plaint occurred due to number of years having elapsed from the date of execution of the sale deed and construction having taken place in the vicinity of the property in question in the meantime.

[6]. I have considered submissions made by learned counsel for the petitioner-plaintiff and have also gone over order dated 08.07.2016 (Annexure P-1) as well as order dated 09.10.2017 (Annexure P-2). Both the Courts below i.e. learned trial Court as well as Learned Lower Appellate Court in paragraph No.5 and paragraph No.8 of Annexure P-1 and Annexure P-2 respectively, have recorded a categorical finding that the dimensions of the property as per the sale deed and as per details given in the head note of the plaint do not match, therefore, no prima-facie case was made out in favour of the petitioner plaintiff, therefore, the petitioner-plaintiff was not entitled to the grant of interim injunction.

[7]. As per decision of the Hon'ble Supreme Court in case titled as **Shanti Kumar Panda vs Shakuntala Devi-2004(1) SCC 438**. Relevant extract of para 22 of the above said decision is reproduced here under:-

“At the stage of passing an interlocutory order such as on an application for the grant of ad interim injunction under Rule 1 or 2 of Order 39 of the Civil Procedure Code, the competent Court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury – the three pillars on which rests the foundation of any order of injunction.”

[8]. In the instant case, prima facie case is not made out in favour of the petitioner due to dimensions of the property as per the sale deed and as per details given in the head note of the plaint not matching.

[9]. In view of the position as noted above, it cannot be said that there is any infirmity with the orders passed by the Courts below. Accordingly, finding no merit in the revision petition, the same is dismissed.

[10]. At this stage, learned counsel for the petitioner-plaintiff prays for liberty to move an appropriate application before the learned trial Court by setting out the correct dimensions of the property. Needless to mention, it would be open to the petitioner-plaintiff to move an appropriate application in accordance with law. In case any such application is moved, the same would be decided in accordance with law.

[11]. Revision petition is dismissed in the light of the observation made above.

(B.S.WALIA)
JUDGE

November1, 2017

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No