

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

**CR No.8187 of 2016(O&M)
Date of Decision-10.01.2017**

Amritpal Singh and another

... Petitioner

Versus

Skynet Enclave Residents Welfare Association through its
President and others

... Respondents

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

Present: Mr. Arvind Singh, Advocate and
Mr. Sandeep Jain, Advocate for the petitioners.

Mr. Shailendra Jain, Sr. Advocate with
Mr. Kshitij Sharma, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of order dated 15.11.2016 passed by the Additional District Judge, SAS Nagar, Mohali vide which order dated 11.07.2016 passed by Civil Judge (Junior Division), Derabassi was set aside.

[2]. Plaintiffs-petitioners filed a suit for permanent injunction seeking to restrain respondents No.1 and 2 from stopping the plaintiffs from using the public passage as shown in the site plan.

[3]. Plaintiffs claimed themselves to be residents of village Lohgarh and were co-sharers in the total land measuring 70 Bighas, 3 Biswas as per *jamabandi* for the year 2014-15. In November, 2009, respondent No.1 contacted with the plaintiffs and other co-sharers for purchase of 4 acres of land for laying a residential colony in the name and style of Skynet Enclave. Plaintiffs-petitioners and other co-

sharers agreed to sell the land to respondent No.1 for a valid consideration. Respondent No.1 through its Managing Director, Vipul Ranchal allegedly executed an affidavit dated 01.12.2009 that the passage belonging to the plaintiffs and other co-sharers will be left by him after developing house/flat in the land in question. Respondent No.1 shall have no objection in case plaintiffs and other co-sharers wanted to use the same. Respondent No.1 developed a residential Skynet Enclave on the land in question and thereafter, sold the residential houses and flats to number of persons after leaving passage for the purpose of using the same by the residents of Skynet Enclave as well as by the plaintiffs and other co-sharers.

[4]. Plaintiffs further asserted that they are still owners of 9 bighas of land shown in the site plan by letters ABCD in Green colour and have been using the passage in question for ingress and egress purposes. Plaintiffs claimed that there was no passage to their land except the passage in question. After developing the colony, respondent No.1 formed a Welfare Association in the name and style of Skynet Enclave Residents Welfare Association for looking after the affairs of respondent No.1. Respondent No.2 is the President of respondent No.2. A dispute arose between the parties with regard to use of the passage. Ultimately, the aforesaid suit came to be filed.

[5]. Trial Court vide order dated 11.07.2016 granted ad interim order in the following manner:-

“Present: Sh. Deepak Gupta, Advocate, counsel for plaintiff.

Suit received by entrustment. Office report seen. Court fee is correct. No caveat is attached. It be registered. Let notice to defendants be issued through the mode of RC/Dasti/approved Courier service, at the own responsibility of plaintiff, returnable for 4.8.2016.

In the meanwhile status quo ante regarding the usage of passage be maintained by the parties.

*Sd/Sonali Singh
CJ(JD) Dera Bassi
11.7.2016”*

[6]. Respondent No.1 feeling aggrieved against the aforesaid order, filed a miscellaneous appeal before the lower Appellate Court. The Lower Appellate Court vide order dated 15.11.2016 accepted the appeal. That is how, the present revision petition came to be filed by the plaintiffs-petitioners.

[7]. I have heard learned counsel for the parties.

[8]. Both the parties have tried to impress upon the Court by asserting their respective claims. Learned counsel for the petitioners by relying upon undated affidavit executed by Managing Director, Vipul Ranchal and by relying upon number of photographs asserted that respondent No.1 has no right to interfere with the passage in question. Learned counsel further asserted that passage in question is a public passage and the Municipal Council, Zirakpur has already done pre-mix and paver work on the street. The passage is a common passage/road and no individual has any personal right in it.

In a way, learned counsel for the petitioners tried to submit that the passage in question is a public street and vests in the Municipal Council, Zirakpur.

[9]. On the other hand, learned counsel for the respondents by relying upon number of documents tried to impress upon the Court that there was no passage shown in the sale deed executed in favour of the respondents. Earmarked portion was handed over to the respondents by the vendors/co-sharers and thereafter, Skynet Enclave came to be constructed. Residents Welfare Association has taken the task of managing the affairs of the Enclave. As per lay out plan of the Enclave, the passages are shown as an internal connectivity and passage in question has no connectivity with the land of the plaintiffs as projected in the plaint. No such Rasta was provided as per lay out plan as well as in the revenue record. No gate was shown in view of Annexure R2 as per learned counsel for the respondents. As per Aks Shajra, no individual Rasta was provided to the khasra Nos.38/1 min, 38/10, 38/11/1. Khewat number of the land in question is 410 and total area of 70 bighas, 3 biswas was the land owned and possessed by the original co-sharers. During consolidation, one Rasta was provided to the big chunk. It appears that with the passage of time different co-sharers came to be in actual possession of different parcels of land. The land in question was sold by defined number of co-sharers in favour of respondent-Skynet Enclave. Khasra Nos.38/1, 10, 11/1 are lying

vacant at the spot and the remaining land was constructed by Skynet Enclave.

[10]. Learned counsel has argued that there was no recital of Rasta in the sale deeds. Only affidavit of Managing Director was relied who was not authorized because Welfare Association had taken over the charge of the Enclave. The provisions in terms of Punjab Apartment and Property Regulation Act, 1995 are in force qua the property in question. No claim can be made by the plaintiffs in respect of the property in view of provisions contained in Punjab Apartment and Property Regulation Act, 1995. The maintenance of Rasta by the Municipal Council within the Enclave does not give any right to the plaintiffs to claim the Rasta for their ingress and egress purposes. Rasta is exclusively within the boundary of Enclave so as to provide connectivity to number of flats. The lay out plan of the Enclave has determinative value. Brochure map, photographs, Google Imagery, edited plan and video's were relied by learned counsel for the respondents to deny the claim of the plaintiffs.

[11]. Both the parties have tried to argue with reference to number of documents, at this juncture, this Court is not in a position to appreciate the controversy particularly when matter regarding ad-interim injunction is still pending before the trial Court. Vide order dated 11.07.2016, Civil Judge (Junior Division), Derabassi had granted status quo ante regarding usage of the passage at the time of issuance of notice to the defendants. The legality and proprietary

of the said order was considered by the lower Appellate Court in the order dated 15.11.2016.

[12]. The evidentiary value of the documents sought to be projected at this stage would be gone into by the trial Court at the relevant time. Trial Court granted order of status quo ante regarding passage without adverting to anything in the order dated 11.07.2016. The said order was passed ex parte. As per proviso to Order 39 Rule 3 CPC, it was legally incumbent upon the trial Court to record its reasons for granting ad interim order except where the Court feels that the object of granting injunction would be defeated by delay. Where the Court proposes to grant an injunction without giving notice of the application to the opposite party, the Court is required to record reasons for its opinion that the object of granting injunction would be defeated in the event of delay.

[13]. In **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others, (1993) 3 SCC, Page 161**, it was held that issuance of injunction without notice to the opposite party has to be resorted to in exceptional cases as such orders would have far-reaching consequences. Recording of reasons before passing such order is the legal requirement. Proviso added to Order 39 Rule 3 would make it as mandatory requirement for doing a thing in a particular manner.

[14]. The entire controversy relates to existence or non-existence of passage in question. At this preliminary stage, no

positive finding can be recorded, lest it may prejudice the case of either sides at the relevant stage.

[15]. In my considered opinion, the Lower Appellate Court has not committed any error of jurisdiction in accepting the appeal. However, while accepting the appeal, the Lower Appellate Court should have remanded the case to the trial Court for passing a fresh order in accordance with law. Trial Court should have been asked to decide the application under Order 39 Rules 1 and 2 CPC in accordance with law. Trial Court would be at liberty to pass ex parte order or after hearing both the sides while deciding the application under Order 39 Rules 1 and 2 CPC. In both eventualities, trial Court would be at liberty to proceed after adhering to mandatory requirement of law. Nothing expressed hereinabove would be construed to be an opinion on the merits of the case in any manner.

[16]. With the aforesaid modification, this revision petition is disposed of. Now the trial Court would be at liberty to proceed with the application under Order 39 Rules 1 and 2 CPC in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

10.01.2017
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No