

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.2125 of 2017

Date of Decision.21.05.2018

Puran (deceased)

...Petitioner

Vs

Chatter Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the petitioner.

-:-

AMIT RAWAL J.(ORAL)

The petitioner-plaintiff is aggrieved of the order dated 3.12.2016 (Annexure P-4) rendered by the Additional District Judge, Hisar whereby the appeal against the judgment dated 28.10.2015 awarding sentence of civil imprisonment for two months in the proceedings under Order 39 Rule 2-A has been set aside.

The petitioner-plaintiff submitted that the civil suit claiming injunction against the respondent-defendant was filed which was allowed vide judgment and decree dated 18.8.2004 in the following manner:-

“Relief:

As a sequel to my findings on the aforesaid issues, the suit of plaintiff succeeds and is hereby decreed. Defendants are restrained from raising any construction or making any encroachment on the road comprised in Khewat No.206, Khatoni No.351 min, Khasra No.96(45-3) situated at village Mirkan, Tehsil and District Hisar. The parties are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.”

Since there was violation of the aforementioned order,

cause of action accrued in favour of the appellant-plaintiff to prefer

the contempt petition under Order 39 Rule 2-A CPC which was filed in the year 2013. The same was allowed by the trial Court but the lower Appellate Court has abdicated in reversing the finding by relying upon the demarcation report which is neither here nor there, for, the report of the local commissioner has not been adverted to.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that the contempt petition under Order 39 Rule 2-A was not maintainable as the remedy under the statute was under Order 21 Rule 32 CPC. The contempt petition under Order 39 Rule 2-A is maintainable only during the pendency of proceedings to decide where there was alleged violation of any order passed by the Court in those proceedings or not. Be that as it may, there is candid admission of the wife of the plaintiff in the cross-examination that defendant had not put any construction in front of her house and the road belongs to PWD Department. The report of the local commissioner shown during the course of hearing also did not establish any alleged violation.

In view of the aforementioned, the order passed by the lower Appellate Court is perfectly legal and justified as the same is based upon correct appreciation of fact and law and cannot be said to be passed without jurisdiction. The same is upheld and the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No