

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2461 of 2018
Date of decision:25.04.2018

Inderjit Singh

... Petitioner

Vs.

Balwinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Sirphikhi, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order, whereby, the application under Order 39 Rules 1 and 2 CPC moved alongwith suit claiming permanent injunction for grant of ad interim injunction restraining defendant not to encroach upon the street to be a public has been dismissed by the trial Court and miscellaneous appeal preferred before the Lower Appellate Court also met with the same fate.

Mr. G.S.Sirphikhi, learned counsel for the petitioner-plaintiff submits that trial Court before adjudication of the application filed under Order 39 Rules 1 and 2 CPC granted the ad interim injunction which ultimately was not confirmed by the Lower Appellate Court. The miscellaneous appeal has erroneously been rejected, for, ingredients of Order 39 Rules 1 and 2 CPC, i.e., prima facie balance of inconvenience and irreparable loss have been established through documents attached

alongwith plaint. The Courts below failed to consider that defendant had purchased only 1½ marla of land vide registered sale deed dated 06.05.1998 but the site plan was sanctioned in respect of 2 marlas of land which itself was sufficient material on the record enabling the Court to form an opinion in favour of the petitioner-plaintiff but having not adverted to the aforementioned document, there is illegality and perversity and thus, orders under challenge are without jurisdiction.

I have heard the learned counsel for the petitioner-plaintiff and appraised the paper book.

Before I could deal with the arguments of Mr. Sirphikhi, a specific query was raised to him with regard to ascertaining the status of the suit, it has been apprised that suit is slated for plaintiff's evidence. The suit was filed in the year 2016. It is yet to be proved whether the street is public or private. One of the reasons for declining the application and miscellaneous appeal was that Municipal Council, Batala has not been made a party to the suit but that can be taken care of by the plaintiff by examining the witness from the concerned department.

On overall appreciation of record, I am of the view that granting ad interim injunction would tantamount to decreeing the suit. The plaintiff should have focused on leading the evidence enabling him getting the suit decided as early as possible.

While upholding the orders under challenge, revision petition stands disposed of with a direction to the trial Court to decide the suit after affording 3-3 effective opportunities to each of the parties as early as

possible preferably within a period of 10 months from the date of receipt of certified copy of this order.

(AMIT RAWAL)
JUDGE

April 25, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No