

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

C.R. No.27 of 2018

Date of Decision.10.01.2018

Bachan Singh and another

.....Petitioners

Vs

Lakhwinder Kaur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Punchi, Advocate
for the petitioners.

Mr. S.S. Rangi, Advocate
for the caveator-respondents.

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AMIT RAWAL J.(ORAL)

The present revision petition has been preferred at the instance of the defendants in the civil suit titled as “Lakhwinder Kaur and others Vs. Bachan Singh and others” wherein the following relief had been sought:-

“Suit for declaration to the effect that the plaintiffs and proforma defendant no.3 have indefeasible to get right of path for ingress and egress by way of prescription and easement of necessity through the passage comprised in Square No.76 Killa No.22/2(0-9), 23/2(0-7), Khewat No.516 Khatuni No.657, as per jamabandi for the year 2011-2012 situated in village Abholi, Tehsil Rania, District Sirsa, further through Square No.65 Killa No.23(3-12) 24/1(4-8), 24/2(3-12), (on the southern side of these killa numbers) having two karams width as per jamabandi for the year 2011-2012, situated in village Ottu, Tehsil Rania, District Sirsa; as a consequential relief of permanent injunction restraining the defendants from creating any hinderance in Rasta/path to ingress and egress to reach

the house of the plaintiffs and proforma defendant situated in Square No.66 Killa No.4/1(2-12) on the eastern side which is in ½ share and agriculture land in Square No.65 Killa No.25 (8-0), etc. and also for mandatory injunction directing the defendants for restoration of the same in Square No.65 Killa No.23, 24/1 mischief of cause during the pendency of the previous suit the defendants created any hindrance over the said path; on the basis of evidence of every description-oral as well as documentary.”

Along with aforementioned suit, an ad interim application under the provisions of Order 39 Rule 1 and 2 CPC had been preferred. The trial Court vide order dated 05.04.2016 allowed the application restraining the petitioners-defendants in the suit from creating any hindrance in the passage running on southern side of Killa No.23 and 24/1 of Square No.65 with further direction that they may fill the earth in the damaged portion of passage to the extent of reasonable convenient level. The aforementioned order has also been upheld in the Appellate Court and in this backdrop of the matter, present revision petition has been preferred.

Mr. Sandeep Punchhi, learned counsel appearing on behalf of the petitioners submitted that the respondents-plaintiffs had another land bearing Killa No.3 as depicted in the *Aksh Shijra*, which had been sold and therefore, they had no passage to killa No.66//5/2, as the passage is only into Khasra No.21/2. All these facts have not been noticed by the Courts below for granting injunction and heavy reliance had been laid to the previous interim order passed in suit instituted by Mulakh Raj and others against the respondents Lakhwinder Kaur and others i.e. plaintiffs in the

present suit. The plaintiffs have not been able to bring the case within the ingredients/provisions of Order 39 Rule 1 and 2, thus, prima facie balance of convenience is in favour of the petitioner-defendants and irreparable loss would be caused to them. The respondents-plaintiffs have no passage belonging to their land whereas the passage belongs to petitioners-defendants. All these factors were required to be pondered upon and therefore, the orders under challenge are not sustainable in the eyes of law and liable to be set aside.

Mr. S.S. Rangi, learned counsel appearing on behalf of the caveator-respondents submitted that the suit is at the stage of plaintiffs' evidence and undertakes to complete the trial within a reasonable time period which this Court may deem appropriate. However, he submitted that in earlier suit, there was not only an injunction order passed whereby the present respondents-plaintiffs herein and defendants in the trial Court were restrained from interfering into the ownership and physical possession of Mulkh Raj over the suit property but it was subject to allowing the respondents-plaintiffs herein peaceful usage of the property. The aforementioned order was assailed and the same was stayed. During this period, defendant No.2 herein dug the earth of the passage. It is in this backdrop of the matter, the cause of action arose to file the suit in hand. Even the local commissioner was also appointed in the earlier suit and as well as in this suit also. The report is also in tandem with the pleadings/application for interim stay as well as suit, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. Serious dispute has arisen with regard to availability of the

passage which will be subject matter of evidence before the Court below. Such matters, in my view, cannot be examined in revision petition. Instead of pondering upon the merit and demerit of the matter, I deem it appropriate to uphold the orders under challenge and dispose of the revision petition by giving direction to the parties to lead evidence in a time bound manner. The plaintiffs and defendants shall avail 3-3 effective opportunities and lead the evidence in support of their respective cases and also file the list of witnesses in advance in case any witness is to be summoned, much less, diet money. The aforementioned 3-3 opportunities will span over a period of 4-4 months each i.e. 8 months and thereafter in two months, the trial Court shall decide the suit in accordance with law.

The revision petition stands disposed of in the above terms. In case, the trial Court found that any of the parties is involved in the dilly-dallying tactics, it shall take into consideration the same and pass appropriate orders in accordance with law.

(AMIT RAWAL)
JUDGE

January 10, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No