

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

**CR-3764-2018**

**Date of Decision: May 31, 2018**

**Surinder Singh and another**

**...Petitioners**

**Versus**

**Manjit Kaur and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Chandandeep Singh, Advocate,  
for the petitioners.

**ARUN PALLI, J. (ORAL)**

The petitioners/defendants are in revision, against the order dated 16.03.2018 (Annexure P-7), rendered by the Civil Judge (Junior Division), Ludhiana, vide which their application, seeking dismissal of the application filed by the respondents/plaintiffs, under Order XXXIX Rule 2-A CPC, has since been rejected.

Before I proceed further, it indeed would be apposite to refer to the conclusions arrived at by the Trial Court, which reads thus:

***“.....The applicants have filed the present contempt petition for initiation of contempt of court proceedings against respondent. It has been averred therein that respondents started raising construction at the suit property owned by the petitioners illegally and forcibly despite injunction order dated 08.11.2003 (08.11.2013?). Perusal of the copy of the order***

*dated 08.11.2013 reflects that it has been ordered therein that exparte stay is granted till 14.11.2013. The perusal of the headnote of the main suit reflects that injunction was sought qua the suit property from interfering in the peaceful use and possession of the plaintiff and from dispossessing the plaintiff or causing to dispossess the plaintiff from the property shown as red and green in the site plan. The perusal of the copy of the judgment dated 26.10.2016 of the court of Ms Rajiwnder Kaur, Ld. CJJD, Ldh reflects that it has been held therein that plea of the plaintiff that front of her property has been reduced due to encroachment on the portion shown as red colour in the site plan is not tenable. Also, final relief has been granted and suit has been partly decreed that defendant is restrained from interfering or causing to interfere in the peaceful use and possession of the plaintiff and from dispossessing the plaintiff from Khasra No. 12316/2 shown as partly red and green in the site plan and from encroaching on the portion left towards plot of the plaintiff after drawing boundary line in straight manner from point A towards road except in due course of law. In the present contempt petition, it is alleged that respondents have raised construction over their property. As such it cannot be concluded that the present petition is only qua portion red as detailed in the judgment. Hence, no ground is made out for dismissal of the petition. Counsel for the (sic) relied upon the case law titled*

*as Kanwar Singh Saini VS High Court of Delhi 2011(4) Civil Court Cases 294 (SC) wherein it has been held that application under Order 39 Rule 2A CPC is not maintainable on the suit is decreed but the present petition is pending during the pendency of this suit. Further reliance has been placed on the case law titled as Prem Singh Vs Darbara Singh 2010 (7) RCR (Civil) 669 (P&H), Dalip Singh and Anothers Vs. Balwinder Singh and another 2009 (4) RCR (Civil) 527 (P&H) wherein it has been held that proceedings under Order 39 Rule 2A CPC cannot be continued after the suit is dismissed. But in the present case suit has been decreed partly and it is a matter of evidence whether that the violation is qua the portion regarding which present contempt petition has been filed has been decreed or dismissed. Hence, the application is hereby dismissed.”*

In brief, the grievance of the petitioners is that an application, under Order XXXIX Rule 2-A of the CPC, was moved as regards the red portion depicted in the site plan, regarding which the finding was recorded against the respondent-plaintiffs. Therefore, post dismissal of the suit in respect to red portion, even the contempt application would not survive. However, it is concluded by the Trial Court that the suit of the respondent-plaintiffs was partly decreed, and the petitioner-defendants were enjoined from interfering or causing dispossession of the respondent-plaintiffs from Khasra No. 12316/2, which was partly shown in red and partly in green

application was only qua red portion referred to in the judgment. And, in any case this aspect was required to be determined after the parties would lead their respective evidence.

That being so, I am dissuaded to exercise the revisional jurisdiction under Article 227 of the Constitution of India. The revision being devoid of merit, is accordingly dismissed.

**(ARUN PALLI)**  
**JUDGE**

**May 31, 2018**  
**P Kapoor**

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO