

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

Civil Revision No.4368 of 2014 (O&M)

Date of decision: May 30, 2018

Baljit Singh and another

...Petitioners

Versus

Banta Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Brar, Advocate
for the petitioners.

Mr.I.S.Brar, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioners Baljit Singh and Makhan Singh have filed this revision petition against respondents Banta Singh and Gurmit Singh under Article 227 of the Constitution of India for setting aside order dated 11.04.2014 passed by learned Civil Judge (Senior Division), Sri Muktsar Sahib, vide which application filed by the petitioners-plaintiffs for ad interim injunction was dismissed and judgment dated 21.05.2014 passed by learned Addl. District Judge, Sri Muktsar Sahib, vide which the appeal filed by the petitioner was also dismissed.

Notice of motion was issued. Learned counsel for the respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone

through the record.

From the record, I find that plaintiffs Baljit Singh and Makhan Singh (both sons of Gurdev Singh), present petitioners, have filed suit against defendants Banta Singh and Gurmeet Singh for permanent injunction restraining the defendants from interfering into the peaceful use of plaintiffs over the street shown as ABDCEFGHIJ in the site plan attached with the plaint, same being used by the plaintiffs and other inhabitants for the ingress and egress for the last so many years. Mainly the case of the plaintiffs is that plaintiffs are owners in possession of a house measuring 2 kanals and they had purchased the same from Makhan Singh son of Mal Singh vide registered sale deed dated 03.10.1997. The defendants are also residing in their house just opposite to the house of the plaintiffs. Between the two houses, there exists a street measuring 5½ feet in width and this street exists for the last so many years and same is being used by the plaintiffs as well as other inhabitants of the village for their ingress and egress. The street in question is being used commonly and very often by the plaintiffs and other inhabitants of the village. The plaintiffs are also having their door and windows of their house, which opens in the street in question for the last so many years. It is also stated that in the sale deed dated 03.10.1997, it has been clearly mentioned that there exists the street. Along with the suit, an application under Order 39 Rule 1 & 2 CPC read with Section 151 CPC has filed.

Learned Civil Judge (Sr. Divn.), Sri Muktsar Sahib, dismissed the application vide impugned order dated 11.04.2014. Aggrieved from this order, an appeal was filed and learned Addl. District Judge, Sri Muktsar Sahib, vide impugned judgment dated 21.05.2014, dismissed the appeal.

Aggrieved from above-said order and judgment, present revision petition has been filed by the petitioners-plaintiffs.

The main argument of learned counsel for the petitioners is that the street in question is in existence for the last so many years and they are using the same along with other villagers. It is nowhere the case of the plaintiffs that it is a public street. The plaintiffs have nowhere asserting their rights on the basis of prescription or easement of necessity. It is also not the case of the plaintiffs that they owned this street or it is a joint street of plaintiffs and defendants. It is also not the case of the plaintiffs that in the sale deed, they have purchased this street.

Learned counsel for the petitioners-plaintiffs argued that there is mention in the sale deed regarding existence of this street. The site plan has also been placed on record, which is Annexure P-3 and the copy of sale deed is Annexure P-2. 2 kanals of land has been purchased by the plaintiffs from Makhan Singh son of Mal Singh, boundary of which has been given as East: Mukhtiar Singh, towards West: Bant Singh, Karnail Singh, towards North: street which adjoins to Bant Singh Gurmit Singh, towards South: public passage pucca circular road. Now, the perusal of the site plan shows that this site plan, on the face of it, is wrong and cannot be relied upon for any purpose. Nothing can be inferred from this site plan as proper dimensions have not been mentioned regarding North, East, South and West.

Further, in the site plan, on one side, house of Mukhtiar Singh has been shown and on the other side, phirni has been shown. If the house of Mukhtiar is taken on Eastern side then on Western side, there is no house of Bant Singh, rather phirni has been shown. Similarly, on the Northern

side, a street has been shown adjoining to houses of Baljit Singh and Gurmit Singh but nowhere the house of Bant Singh has been shown in the site plan, though, an attempt was made by writing Bant Singh at 2-3 places in the site plan but nowhere house of Bant Singh has been mentioned. Similarly, on the disputed property, towards South, public passage has been mentioned. The dimensions given in the sale deed do not co-relate with the site plan. It is basic law that no relief can be granted on the basis of vague averments or where the suit property has not been properly described nor it could relate with the dimensions given in the sale deed and the site plan is vague and uncertain. No ad interim injunction can be granted, which cannot be enforced by the Court on the vague and uncertain site plan.

Learned counsel for the petitioners cited judgments passed by this Court in *Smt.Nirmal vs. Lakhpat Singh, 2001(4) RCR (Civil) 164*, *Sunehari and another vs. Chatru and others, 1990(2) LJR 137*, *Parkash Singh vs. State of Haryana and others, 2002(2) RCR (Civil) 653* and *Varinder Kaur vs. Jaswinder Kaur and others, 2014(56) RCR (Civil) 132* regarding prima facie case. As already discussed, when the dimensions have not been properly mentioned and the site plan is vague, in no way, it can be held that plaintiffs have prima facie case in their favour. Therefore, the above-cited judgments will not apply in the case in hand.

In view of the above discussion, I find that the findings given by both the Courts below are correct. No illegality has been committed by lower Courts. Therefore, the impugned order dated 11.04.2014 passed by learned Civil Judge (Junior Division), Sri Muktsar Sahib and judgment dated 21.05.2014 passed by learned Addl. District Judge, Sri Muktsar Sahib,

are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 30, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No