

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 112

CR-4388-2018

Date of decision : 18.07.2018

Rajbala and another

..... Petitioners

VERSUS

Gram Panchayat Gangaicha Ahir and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. P. S. Chauhan, Advocate, for the petitioners.

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DEEPAK SIBAL, J. (ORAL)

Through the present petition, the petitioners challenge the order dated 18.09.2017, passed by the Civil Judge (Senior Division) Rewari (for short, the Trial Court), dismissing the petitioners' application filed under Order 39 Rules 1 and 2 read with Section 151 CPC. Challenge is also made to the order dated 18.05.2018, passed by the Additional District Judge, Rewari (for short, the Appellate Court), dismissing the petitioners' appeal filed against the aforesaid order of the Trial Court.

Briefly, the facts of the case as culled out from the record as also after hearing learned counsel for the petitioners are that the petitioners are owners in possession of "gair mumkin gait" bearing Khata No. 276, Khasra No. 139/2(0-5), as detailed in para 1 of the plaint. Over this land the petitioners have constructed their residential house and on its northern side a washroom has been constructed. For development of a better drainage system in the village demarcation was got done through the revenue officers as per which several villagers including the petitioners were found to have

encroached upon a common passage upon which the existing drainage system was sought to be extended. However, when possession of the encroached property was sought to be taken, the petitioners instituted the present suit seeking injunction. Alongwith the suit, an application seeking interim injunction was also filed by the petitioners to restrain the respondents from demolishing their washroom which was alleged to have been constructed on the common passage of the village. The application was considered by the Trial Court and rejected. The appeal filed by the petitioners against aforesaid rejection met the same fate, giving them a cause to file the present petition before this Court.

Learned counsel for the petitioners submits that both the Trial Court as also the Appellate Court erred in not granting interim relief to the petitioners as they had a *prima facie* case; balance of convenience was also in their favour and that irreparable loss would be caused to them in case their washroom is demolished. It was further submitted that the demarcation report relied upon by the Trial Court as also the Appellate Court was worthless as no notice to the petitioners had been issued by its author before making the same. Political rivalry against the present Sarpanch was submitted to be the reason behind the action against the petitioners.

The afore submissions made by learned counsel for the petitioners have been considered but not merit in the same is found.

To reject the application filed by the petitioners seeking interim relief, both the Trial Court as also the Appellate Court have *inter alia* relied upon a demarcation report which was placed on record by the respondents.

The demarcation report is authored by the revenue officers and is a result of a survey which was got conducted for extension of the existing drainage system in the village. As per the demarcation report several villagers including the petitioners were found to have encroached upon the panchayat land/common passages. The petitioners have not been singled out. No malafide have even been alleged against the revenue officers who are the authors of the demarcation report. No site plan or demarcation report has been filed by the petitioners to counter the aforesaid demarcation report placed on record by the respondents. A perusal of the orders impugned in the present petition shows that the petitioners had been issued notices under Section 24(1) of the Haryana Panchayati Raj Act, 1994 for removal of the encroachments done by them. However, in spite of the same the petitioners adamantly did not do so.

In view of the above, this Court is not inclined to interfere with the concurrent findings of facts returned by both the Trial Court as also the Appellate Court in not granting interim relief to the petitioners especially when the encroachments by the petitioners are sought to be removed for the development of a better drainage system in the village.

Dismissed.

18.07.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No