

In the High Court of Punjab and Haryana at Chandigarh

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CR No. 4481 of 2017 (O&M)

Date of decision: 21.11.2018

Khushwant Singh

.....petitioner

Versus

Jaspal Singh and ors

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sherry K.Singla, Advocate,
for the petitioner.

Mr.Dinesh Kumar, Advocate for
Mr.M.K.Singla, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(oral)

Petitioner has assailed the order dated 2.11.2016 passed by the Civil Judge (Jr.Divn.) Sunam, vide which application filed by respondent No.1 under Order 39 Rules 1 and 2 CPC was allowed, thereby, restraining the defendant-petitioner from causing any hole or damage to the wall of plaintiff-respondent No.1 and the judgment dated 12.4.2017 passed by the District Judge, Sangrur upholding the said order.

The property of the plaintiff is situated adjoining to the property of defendant No.1-petitioner. Plaintiff filed a suit for declaration to the effect that plaintiff is owner in possession of one house within *lal lakeer* having defined configurations. Plaintiff sought restraint against the defendant for digging up hole in the wall situated in the north-west side marked by letters

ABC in red colour and resting the roof on the wall as well as girders on the wall to cause any damage to the house of the plaintiff. In para No.4 of the plaint, it has been recited that defendant wants to forcibly dig holes and rest his roof and girders on the wall marked as ABC in red colour situated towards north-west of his house and wants to cause damage to the house of the plaintiff for which defendant has no right to do so.

In the written statement filed by the defendants, recital was made that the house of the defendants adjoins the house of the plaintiff towards northern side. Northern-Western wall of the house of the parties is common. Plaintiff and defendant No.1 are co-sharers in the joint wall in equal shares. Defendant moved an application to the police, on which both the parties were called in the police station, where, the plaintiff has admitted by way of suffering a statement that the wall in dispute is a common wall between the parties, but he stated that he will not allow the defendant to uplift the level of roof of the room and will not allow the defendants to keep any load on the wall in dispute.

Learned counsel for the plaintiff relies upon the statement made by the plaintiff in the police station on 1.10.2016 to contend that the wall in question is joint wall of the parties. Plaintiff has raised the wall beyond 14 ft. by putting

bricks and cemented the same. Perusal of the wall up to 14 ft towards the side of defendant No.1-petitioner would show that the pillar adjoining to 14 ft wall appears to have been erected towards the side of defendant No.1. The wall up to 14 ft appears to be damaged one as outer layer of the wall has been damaged on account of pilferage.

The argument raised by learned counsel for the petitioner on the strength of **Sardari Lal Gupta vs. Siri Krishan Aggarwal 1984 AIR (Punjab) 439** and **Smt.Shakuntla Rani vs. Shri Ram Kanwar 1993 CivCC 486** do not advance the case of the petitioner inasmuch as that **Sardari Lal Gupta's case (supra)** is a decision rendered by the High Court in regular second appeal, where after conclusion of the evidence of the parties, it was found that the wall in between the properties was a common wall to which both the parties had right to raise construction. **Smt.Shakuntla Rani's case (supra)** is on different pedestal inasmuch as that the same involved a common wall and the controversy started thereafter, which ultimately resulted in the observations given by the Court that in case of common wall, a party cannot be restrained in the manner as suggested in the said case.

In the instant case, the evidence is yet to be collected. Prima facie consideration of the case would show that the old wall was up to 14 ft in height towards the side of

defendant No.1-petitioner and many bricks are missing from the wall. There is no prima facie proof of existence of any lintel (*lentar*) towards the side of the plot of defendant No.1-petitioner at the level of 14 ft in order to show that there was a roof existing at the level of 14 ft and after removal of the same, defendant No.1-petitioner wants to raise construction of his plot up to the level to which the plaintiff has raised the existing 14 ft wall.

Prima facie it appears that the pillar erected by defendant No.1-petitioner is on his side of the plot for which there is no sharing of common wall up to 14 ft. At this stage of the case, no findings on merits can be recorded, lest it may prejudice the case of either side during trial. Since the plaintiff has already erected construction by raising the existing wall, therefore, it would be just and appropriate not to allow defendant No.1-petitioner to make any such act, which may endanger the existing old wall, which appears to be in a depilated condition so as to cause any threat to the existing wall, which has already been raised up to the height of lintel towards the side of the plaintiff.

In view of the existing position as depicted from the photographs (Annexure P-6), it would not be in consonance with the existing position to make the old wall to be a load bearing wall of two constructions. One construction has already been made by the plaintiff towards his side. Allowing defendant No.1-

petitioner to put lintel on the old wall may result in collapse at the site. Without meaning anything on the merits of the case, I deem it appropriate not to interfere in this revision petition.

Accordinging, the same is dismissed.

November 21, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/Speaking Yes/No

Whether reportable Yes/No