

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

**CR No.6347 of 2017(O&M)
Date of Decision: 03.10.2018**

Sangeeta Rani and others**Petitioners**
Versus
Prince and another**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sushil Jain, Advocate
for the petitioners.

Mr. Bhoop Singh, Advocate
for respondent No.1.

Mr. S.K. Mahajan, Advocate
for respondent No.2/M.C. Panchkula.

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed this revision petition against the order dated 12.09.2017 passed by Additional District Judge, Panchkula, whereby order dated 20.02.2017 passed by Civil Judge (Junior Division), Panchkula was reversed and ad interim injunction application filed by the petitioners was dismissed.

[2]. Plaintiffs/petitioners filed a suit for permanent injunction, restraining defendant No.1 from raising any construction over the projection as shown by letters ABCDE in red colour in the site plan attached with the plaint. Further

restraint was sought against defendant No.1 from raising any sort of construction beyond sanctioned site plan. Mandatory injunction was also sought, directing defendant No.2/Municipal Corporation, Panchkula to demolish the projection as shown in the red colour as ABCDE in the site plan.

[3]. Perusal of the pleadings and material on record would show that there is a common street of 10 feet in width between the houses of the parties. Defendant No.1 is constructing a house along with shop in plot/house No.175, village Maheshpur, Panchkula. Defendant No.1 has started to extend the lintel of the property to the extent of 4 feet towards common street. Plaintiffs claimed that defendant No.1 has no right to extend the same in the common street specially when site plan was not sanctioned by defendant No.2/Municipal Corporation. The construction was sought to be stopped and mandatory injunction was also sought, directing defendant No.2 to demolish the projection already raised by defendant No.1. Plaintiffs in the site plan attached with the suit have shown the alleged encroached area to be ABCDE in red colour in the first plot adjoining to the phirni of 23 feet wide. Plaintiffs have shown the projection raised by defendant No.1 in the common street and phirni to the extent of 4 feet wide.

[4]. Perusal of the site plan would show that house of

defendant No.1 is 175, house No.174 is of Kamlesh Rani, house No.173 is of Sangeeta Rani, house No.172 is of Avinash Kumar, house No.171 is of Fateh Singh, house No.170 is of Pawan Kumar, house No.169 is of Ashok Yadav on the right side of common street. On the opposite side, house No.168 is of Kaushalya Devi and house No.167 is of Ravinder. Thereafter, big chunk of plot is shown to be in the name of Parkash High School whose owner is Ajay Kumar son of Ved Parkash.

[5]. Trial Court vide order dated 20.02.2017 allowed the application under Order 39 Rules 1 and 2 CPC after finding *prima facie* case in favour of the plaintiffs and no balance of convenience was found in favour of defendant No.1. It was observed that public street would be at stake if defendant No.1 is allowed to carry on construction over portion ABCDE without getting the site plan sanctioned from defendant No.2. Defendant No.1 was restrained from raising any further construction over portion ABCDE till final disposal of the suit.

[6]. In the appeal before the Additional District Judge, Panchkula, the Lower Appellate Court took cognizance over the photographs produced before it. It was observed that the matter is between the defendant and Municipal Corporation. The stand of the Municipal Corporation was also appreciated to the effect that if any violation is found on behalf of the defendant,

Municipal Corporation would take appropriate action.

[7]. During course of arguments before this Court, site plan produced by the plaintiffs along with the suit was claimed to be a clever devise of the plaintiffs. Plaintiffs have intentionally shown the alleged encroachment by defendant No.1 without showing the factual position viz-a-viz the street existed on the spot. By way of Annexure R1/A produced on record by respondent No.1 along with CM No.5811-CII of 2018, it has been shown that the alleged encroachments in plot Nos.174, 172, 171, 170 and 169 towards north side of the street are also in the same proportion as in house No.174-A belonging to defendant No.1. On the other hand, house Nos.168 and 167 also have the encroachment to the same extent in the common street. At the dead end shown in yellow colour by letters DEFG, the construction of toilet with street has been shown. According to respondent No.1, the street at the dead end has been blocked by the owner of house No.168 i.e. Kaushalya who is one of the plaintiffs and the entire street has been encroached by putting a dead end to the street.

[8]. *Prima facie* it appears from the assertions made by both the sides that the plaintiffs have not come to the Court with clean hands by not showing the factual position existed on the spot viz-a-viz the street and different houses on both sides of

the street. Respondent No.1 has also produced some photographs in respect of existing position of the street.

[9]. At this stage, without meaning anything on the evidentiary value of the photographs, it can be seen that the occupants of houses of both sides of the street have constructed apertures/projections in the common street, however, the existence of alleged encroachment can only be proved by way of leading evidence before the trial Court. Plaintiffs have not shown any such alleged encroachment except defendant No.1. Perusal of the pleadings would show that the plaintiffs have filed the suit in their individual capacity.

[10]. At this stage, the maintainability of the suit on the interpretation of Section 91 CPC and Order 1 Rule 8 CPC cannot be exclusively commented upon, but one thing can be appreciated that the plaintiffs have not come to the Court with clean hands by not showing alleged encroachments by the owners of the houses on both sides of the street and the plaintiffs have concealed the aforesaid aspect of the case from the trial Court while obtaining injunction against defendant No.1 only. The stand of the Municipal Corporation, Panchkula is that the Corporation would take lawful action against the encroachers by undertaking lawful exercise in terms of inquiry. A party who has not come to the Court with clean hands by way of

concealing necessary information is not entitled to any indulgence by the Court for grant of equitable relief. However, this Court is sanguine of the fact that the public street may not be allowed to be encroached upon by the encroachers at random.

[11]. In view of aforesaid, I deem it appropriate to direct defendant No.2 to undertake lawful exercise to protect the public street from random encroachment. If after such a lawful exercise, the street in question is found to have been encroached by the owners of the houses of both sides, a demolish derive be undertaken in order to get the street freed from encroachment within reasonable time.

[12]. With these observations, this revision petition is disposed of. Respondent No.2 would be at liberty to verify the construction raised by the owners of the plots on both sides in conformity with the site plan sanctioned by the Municipal Corporation. In case, encroachments are found at the spot, the same be demolished in accordance with law.

October 03, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No