

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

\*\*\*\*

**CR No. 7409 of 2018**

**Date of Decision: 13.11.2018**

Kanwar Singh and others

Petitioners

Versus

Karan Singh

Respondent

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Varun Gupta, Advocate  
for the petitioners/defendants.

\*\*\*\*

**AVNEESH JHINGAN, J (Oral):**

The present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 16.10.2018 passed by the Additional District & Sessions Judge, Rewari.

The respondent/ plaintiff (hereinafter referred to as 'respondent') filed a suit for possession by way of demolition of construction. It was stated that the respondent and other co-sharers are the owners of plot/Gait Ahata No.7, Ghar No.24, as per the site plan attached with the suit. It was claimed that the property in dispute was ancestral and came to the respondent through his ancestor Ruda Ram. An application under Order XXXIX Rule 1 & 2 of Civil Procedure Code (for brevity 'CPC') was filed. The same was rejected by Additional Civil Judge (Sr. Division), Bawal vide order dated 09.08.2018. Aggrieved of the said order, the respondent filed an appeal.

The appellate Court vide order dated 16.10.2018 accepted

the application under Order XXXIX Rule 1 and 2 CPC and restrained the petitioners/defendants from doing any construction over the suit property till the decision on the suit. It was, however, made clear that in case the defendants were raising construction on property other than the suit property, they may continue the construction by getting the property demarcated. Aggrieved of the said order, the present revision petition has been filed.

Learned counsel for the petitioners contended that the appellate Court erred in granting injunction especially when the injunction application was dismissed earlier by the lower Court. He relied upon the decision of this Court in **Kamla Kumar Thapar Vs. Vinod Kumar Thapar 1996(2) PLR 64.** He further relied upon the photographs annexed as Annexure P-9 to show that earlier there was some construction. He further contended that the respondent had no *locus standi* as per pleadings in the earlier suit which was dismissed in default.

The contention raised by the learned counsel for the petitioners lacks merit. The ownership of the suit property of Ruda Ram has not been disputed by the petitioners. The only stand taken was that Ruda Ram relinquished his right in favour of ancestor of the petitioners. It would be important to note at this stage that in the revenue record, the entry still shows the name of the owner of the property in dispute as Ruda Ram. There is nothing except bald statement made that Ruda Ram relinquished his right in favour of the ancestor of the petitioners. It is pertinent to note that the name of the ancestor in whose favour the right was relinquished has not been

mentioned either before the Court below or in the present petition.

The appellate Court has considered the fact that the petitioners were stranger to the suit property and hence they had no legal right to raise any construction. The photographs annexed with the petition does not enhance the case of the petitioners. From the photographs it is evident that earlier there was small shop/room whereas now atleast three more shops were being raised apart from the old one, this itself shows that construction now being carried out by the petitioners is on larger area than the earlier construction.

The appellate Court, keeping in view the fact of the case, has provided a safeguard that in case the construction is being done on the land owned by the petitioner/defendants, they may continue to do so after getting the property demarcated. Even during the arguments, the learned counsel for the petitioners candidly submitted that petitioners were not co-sharers in the property owned by Ruda Ram.

Reliance of the petitioners on the pleadings of the earlier suit to the effect that the respondent/plaintiff had no *locus standi*, cannot be accepted at this stage. The earlier suit was merely a suit for permanent injunction and the same was dismissed in default. Moreover, no dispute has been raised that after the death of Ruda Ram, the property was owned by the respondent/plaintiff and other co-sharers. Meaning thereby that findings recorded by the appellate Court that petitioners are stranger to the suit property, is still not being disputed.

The balance of convenience is in favour of the respondent/plaintiff. Any construction on the disputed land would

cause irreparable loss and injury to them.

The decision in the case of **Kamla Kumar Thapar** (supra) is not applicable in the facts of the present case. This Court while dealing with the said matter specifically held that there was nothing in the order of the appellate Court to show that the order of the trial Court was contrary to law, arbitrary or perverse. There is no quarrel to the proposition of the power of the appellate Court to interfere with the order passed by the trial Court by filing an application under Order XXXIX Rule 1 and 2 CPC.

In the present case, the appellate Court had given a specific finding that the order passed by the trial Court was perverse and was not based on sound judicial principles. The reason given for the said finding is that the trial Court failed to appreciate the fact that the ownership of the respondent/plaintiff of the suit property was not disputed. The petitioners/defendants were not even able to substantiate their stand that the property in dispute was relinquished by Ruda Ram in favour of their ancestor.

No case is made out for interference in the impugned order.

The civil revision petition is dismissed.

**[AVNEESH JHINGAN]**  
**JUDGE**

**November 13, 2018**

*pankaj baweja*

- |                               |   |         |
|-------------------------------|---|---------|
| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable         | : | Yes/ No |