

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

CR No.8984 of 2017

Date of Order: 28.02.2018

Gram Panchayat Village Ridhau

....Petitioner

Versus

Ved Parkash

....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Sumit Gahlawat, Advocate for the petitioner.

Mr. N.S. Panwar, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Petitioner-defendant Nos.1 & 2 are in revision petition against the order dated 11.10.2017 passed by learned Addl. District Judge, Sonapat whereby the appeal of the plaintiff-respondent filed against the order dated 25.7.2017 passed by learned Addl. Civil Judge (Sr. Divn), Kharkhoda, dismissing the application under Order 39 Rules 1 & 2, has been allowed.

Plaintiff-respondent instituted a suit for permanent injunction on the ground that he is the proprietor of the Panna Pindara of Village Ridhau Tehsil Khakhoda District Sonapat and the Mandir, Dharamshala and Shani Mandir, which is situated within the abadi deh of said Village are being used by his family as also other villagers for religious purposes. But the defendants who are strong headed and mischievous persons in collusion with each other wanted to demolish the said Mandir, Dharamshala forcibly and illegally. Present suit was filed when the oral requests were not adhered

to. Along with the suit, an application under Order 39 Rules 1 & 2 CPC was also filed claiming the following relief:

“It is, therefore, prayed that ad-interim injunction may kindly be passed in favour of the plaintiff and against the defendants, restraining the defendants from changing the nature of suit property by way of demolishing the Dharamshala, Mandir etc forcibly and illegally without any right, title or interest in the interest of justice.”

Plaintiff had sought ad-interim injunction, restraining the defendants from changing the nature of the suit property by demolishing the Dharamshala, Mandir etc forcibly and illegally without any right, title or interest.

Said suit was contested by the defendants-petitioners by filing written statement wherein it was admitted that the plaintiff was not the trustee of the property. Neither he was priest nor owner or caretaker of the Temple, which admittedly is owned and taken care/maintained by the Gram Panchayat Ridhau as per title documents. While in the reply to the interim application, it was undertaken that the said Dharamshala had already been demolished before filing of the suit and that the defendants were not changing the nature of the suit property or demolish Mandirs.

The trial Court on the basis of the affidavit and the contents of the application, dismissed the same vide order dated 25.7.2017, however, the Lower Appellate Court allowed the appeal filed by the respondent-plaintiff while observing that the defendants-Gram Panchayat had not placed on record any resolution for carrying out the construction and restrained them from raising any construction over the suit property.

Learned Senior counsel for the petitioners has drawn the

attention of this Court to the photographs (Ex.P.7) to show that Dharamshala had already been demolished and the construction raised is only with regard to the new Dharamshala. Despite the specific undertaking as referred to in paragraph 2 & 3 of the reply to the interim application, learned lower Appellate Court has erroneously granted the injunction to the plaintiff-respondent resulting into impeding the development of village as the entire construction shall be carried out for Dharamshala, therefore the ingredients of Order 39 Rule 1 & 2 CPC did not tilt in favour of the respondent-plaintiff.

Learned Senior counsel for the petitioners further submitted that the resolution would be a piece of evidence, which would be seen at the time of final adjudication of the suit. In fact, the respondent-plaintiff has not been able to place on record any other material to prove pleaded case. Moreover, no harm had been caused by the act of the petitioners especially the plaintiff-respondent, who is not even the proprietor of the Village.

Per contra, learned counsel for the respondent-plaintiff submitted that the entire construction is done at the behest of petitioner No.2, who caused beatings to the plaintiff during the pendency of the suit. Plaintiff had been receiving threats at the hands of the defendants for filing the suit. In this regard, an FIR No.24 dated 13.01.2018, P.S Kharkhoda, District Sonapat under Sections 148,149,323,341,506 IPC has been registered. No harm and prejudice would be caused to the petitioners if the trial Court is directed to expedite the trial of the suit by limiting the rights for leading evidence. In fact, changing the nature of the land would tantamount to causing breach of the conditions as envisaged under Order 39 Rules 1 & 2. He, thus, prayed for dismissal of the petition.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

Before proceeding further, it is worthwhile to reproduce paragraphs 2 & 3 of the reply to the interim application, which read as under:

“That the contents of Para 2 of the application as alleged are false and denied. It is false and denied that the defendants are strong headed or powerful persons or they want to demolish the property forcibly or illegally or have no right, title or interest as wrongly alleged. The said Dharamshala has already been demolished before filing of the above mentioned suit and the defendant No.1 has carried land filling work for construction of said Dharamshala at the southern side of the compound of Temple. It is false and denied that the defendants have any evil design or doing any wrong or illegal act as wrongly alleged. When there is no loss or injury caused or will be caused to the plaintiff, the question of compensation does not arise.

3. That the contents of Para 3 of the application as alleged are false and denied. It is false and denied that the plaintiff has any case or balance of convenience is in favour of plaintiff as wrongly alleged.

The last prayer para is false and denied. The plaintiff is not entitled to any interim relief. It is false and denied that any interim order be passed in favour of plaintiff and against the defendants as wrongly prayed. The defendants are not demolishing the said Shiv Mandir and Shani Mandir and are not changing nature of suit property. The said Dharamshala has already been demolished before

filing of the above mentioned suit and the defendant No.1 has carried land filing work for construction of said Dharamshala at the southern side of the compound of Temple. There is no use of force and there is no illegality. The defendant No.1/Gram Panchayat has all right, title and interest in the said property as well as all the structures made thereon.”

From the factual aspects of the matter, it is not in dispute that said Dharamshala had already been demolished and the new construction, which had been done to some extent, was without causing any damage and loss to the existing two mandirs i.e one Mandir and another Shani Temple. Photographs (Ex.P.7) also reveals that the petitioners are raising construction for setting up new Dharamshala only thus, no construction for changing the nature of land has been carried out.

Be that as it may, I am of the view that the lower Appellate Court has misconceived the material facts leading into passing of the impugned order, which suffers from perversity and illegality.

Consequently, present petition is allowed and the impugned order is set aside. Petitioners-defendants are permitted to raise construction strictly as per undertaking given in the affidavit at their own peril.

February 28, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No