

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

CRM-M-3775-2017

Date of decision:-4.5.2018

Virender

...Petitioner

Versus

Municipal Committee, Samalkha and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Ranjit Saini, Advocate
for the petitioner.

Mr.Deepak Manchanda, Advocate
for the respondent No.1.

Mr.Harkesh Manuja, Advocate
for respondent No.3.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed by petitioner - Virender seeking setting aside of order dated 31.1.2014 passed by Sub Divisional Magistrate, Samalkha accepting application under Section 133 Cr.P.C. filed by respondent – Municipal Committee, Samalkha as well as order dated 29.7.2016 passed by learned Additional Sessions Judge, Panipat whereby the revision petition filed by petitioner

challenging the order dated 31.1.2014 passed by Sub Divisional Magistrate, Samalkha had been dismissed so also order dated 29.7.2016 passed by learned Additional Sessions Judge, Panipat vide which the application moved by the petitioner under Section 311 Cr.P.C. has been rejected.

Briefly stated, facts of the case are that Municipal Committee, Samalkha, District Panipat had filed an application under Section 133 Cr.P.C. against respondent – Virender son of Sh.Lichhman, resident of Shashtri Nagar, Samalkha, District Panipat for removing the illegal possession in the public street marked as 'ABCD' contending that the street in question is being managed by Municipal Committee, Samalkhan; that Virender – respondent by raising a wall in the said street has caused obstruction, as a result of which common people are facing difficulty; that he had done so on an earlier occasion also, which obstruction was got removed by Municipal Committee; that notices were issued to him on various occasions for removing obstruction but to no effect. Hence the application was filed.

Virender – respondent had appeared and filed reply taking the objections stating that there is no public street as alleged and the site rather belongs to him, therefore, notice under Section 133 Cr.P.C. be withdrawn.

Sub – Divisional Magistrate, Samalkha vide the impugned order concluded that from the sale deed dated 4.3.2004 produced by the respondent and site plan of Shashtri Colony, it is clear that at the time of carving out of colony, 8 feet wide street was shown and in the sale deed 8 feet wide street is reflected on the eastern side thereby showing that

disputed street vest in the Municipal Committee. Furthermore, from the site plan of Municipal Committee and from the other sale deed of this area, the existence of street is established; that a part of the street abuts boundary wall of the Government Civil Hospital, whereas the second part touches the part of main street in the shape of English word 'T'. He has also observed that after spot inspection, the obstruction of connectivity was found, therefore, considering the hurdle in ingress and egress and considering the public interest, the possession of the respondent in the street was declared to be illegal and conditional order dated 30.1.2013 was made absolute directing the respondent to remove the illegal possession with immediate effect in public street 8' x 75' as shown in the site plan as 'ABCD', further observing that if the respondent did not do so then the Municipal Committee could get it vacated.

Aggrieved against the order of Sub Divisional Magistrate, Samalkha, the respondent had preferred a revision petition to the Court of Sessions, which was assigned to learned Additional Sessions Judge, Panipat, who had dismissed the revision petition giving reasoning in para Nos.5 to 7, which for ready reference are reproduced as under:

During the course of arguments learned counsel for respondent had drawn the attention of this Court towards the sale deed dated 19.11.2001 which was executed by Rakesh Kumar, Sanjay Kumar and Ajay Kumar sons of Mange Ram in favour of Ravinder Kumar son of Lachhman Singh i.e. real brother of revisionist. In the said sale deed

passage is shown towards western and northern side. The revisionist had himself appended his signature on the said sale deed on the back side of page No.1. Similarly the sale deed dated 6.1.1999 also shows a passage towards northern, eastern and western side. Lay out plan of the locality placed on file also shows a passage of eight feet wide.

The above facts made it clear that the land in question is being used as a gali and the previous land owner had sold the land by showing the land in question as a gali and this factum is also corroborated in the sale deed. The revisionist now cannot claim that the said land is owned and possessed by him.

*In dealing with Revision, the Court has a limited jurisdiction, which can only be exercised in case of flagrant miscarriage of justice. Reliance in this regard may be placed upon **State of Orissa Vs. Nakula Sahu and others 1979 Supreme Court Cases (Criminal) 283** wherein it is held that the power of revision has to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is an error on the point of law which has resulted in flagrant miscarriage of justice. However, such is not the situation in the matter in hand.*

I do not find any illegality or infirmity in such orders, which might have called for interference by this Court while exercising

jurisdiction under Section 482 Cr.P.C.

Therefore, the petition stands dismissed.

4.5.2018

Brij

**(H.S.MADAAN)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No