

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1324 of 2018

Date of Decision: 29.05.2019

Tejbir

.....Petitioner

Vs.

Deep Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. A.K. Goyal, Advocate,
for the petitioner.

Mr. Surender Saini, Advocate,
for respondent no. 1.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner has challenged the order of the learned trial Court dated 05.01.2018 by which the application filed by respondent no. 1-defendant seeking that he be allowed to construct on the suit land which is stated to be standing in his ownership even as per the revenue record.

The suit of the present petitioner (plaintiff) is one seeking a right of easement of necessity for access to the petitioners' house through '*Khasra*' no. 29//22/6 on the ground that there is no other access to his house.

The learned trial Court vide the impugned order after observing that '*Khasra*' nos. 29//22/6 was given to the defendants (respondents herein) by the plaintiffs themselves in a family settlement, allowed the application of the respondent-defendant even while further observing that declaration of easement rights could not be decided without appreciating the evidence.

Having considered the matter though learned counsel for the respondents has submitted that there is a '*Phirni*' (peripheral road), from which the petitioner-plaintiff can have access to his house, even as per the site plan Annexure P-6, *prima facie* at least it would seem that there are two other plots in between the '*Phirni*' and the house/plot of the petitioner, Tejbir, which obviously would be further appreciated on evidence led by both parties by the learned trial Court.

Learned counsel for respondent no. 1 has also submitted that the houses in between are actually those of the sons/immediate relatives of the petitioner and therefore the petitioner is only trying to mislead both courts by showing those two houses between the '*phirni*' and his own house. Yet in the opinion of this Court (*prima facie* to again repeat), as per perusal of Annexure P-6, there is no direct access from the '*phirni*' to the house of the respondent, which would be finally a matter to be adjudicated upon after appreciating evidence by the trial Court.

As regards whether the appellant and others in his family “handed over” the '*khasra*' number through which the disputed passage is sought, that again is a matter to be seen by the learned trial Court by way of evidence and to thereafter determine as to whether a right of an easement of necessity exists in favour of the petitioner or not.

Consequently, this petition is allowed, with the impugned order set aside and status quo directed to be maintained during the pendency of the suit but with it made absolutely clear that this Court has not made any observation on the merits of the case of either of the parties, which would be gone into by the trial Court after appreciating evidence led before it.

The trial Court is also directed to ensure that if proceedings in the suit are attempted to be delayed by the petitioner-plaintiff, by not leading evidence

time and again, evidence shall be closed by order by the trial Court.

May 29, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes